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TRANSCRIPT OF RECORD

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 17071

GEORGE B. PARR, D. C. CHAPA, B. F. (TOM) DONALD, JR., JESUS G. GARZA, SANTIAGO GARCIA, OCTAVIO SAENZ, JESUS OLIVEIRA, O. P. CARRILLO, OSCAR CARRILLO, SR., TEXAS STATE BANK OF ALICE, ALICE, TEXAS, and SAN DIEGO STATE BANK, SAN DIEGO, TEXAS,

Appellants,

-versus-

UNITED STATES OF AMERICA,

Appellee

Appealed from the United States District Court for the Southern District of Texas

U. S. COURT OF APPEALS
FILED
JUN 2 1958

ALPHA LAW-BRIEF CO., 402 M & M BLDG., HOUSTON

(Original Record Received _____ 19__)

EDWARD W. WADSWORTH
CLERK

witness not be asked if there is a similar name, which would call for a conclusion on his part, and that he testify—he may testify that he did not receive checks for certain named persons and does not know who they are.

Mr. Foreman: Yes, sir.

The Court: Very well. That suggestion will be followed.

Mr. Bottler: Do I understand I cannot ask the witness if he has any teacher whose name—

The Court: That is correct. He will be permitted, if it is true, that as to certain names appearing on the list he did not receive checks for those persons and does not know who they were, if true. We will leave the matter strictly to the jury to determine whether or not—I want counsel to listen. You can't talk to each other and listen to the Court.

Mr. Bottler: Excuse me, Your Honor.

The Court: Where was I? Will you read it back to me?

The Official Reporter (Reading): "That is correct. He will be permitted, if it is true, that as to certain names appearing on the list he did not receive checks for those persons and does not know why they were, if true. We will leave the matter strictly to the jury to determine whether or not—"

The Court: —there is any similarity in names appearing on the roll, and teachers or other employees at the Freer school. You may continue.

Mr. Bottler: Thank you, Your Honor.

Mr. Wilkey: May we have one moment, Your Honor?

The Court: Yes, sir.

(Short interval.)

Q. (By Mr. Bottler) Turning your attention to the next check on the list made out to M. P. Leroy.

A. Yes, sir.

Q. What check number is that?

A. Check No. 15469.

Q. For what amount?

A. $215.45.

Q. Was that check paid through your office?

A. No, sir.

Q. What is the next check?

A. Check No. 15465 made out to J. R. Ballard in the amount of $317.58.

Q. And was that check paid through your office?

A. No, sir.

Q. Do you know either M. P. Leroy or J. R. Ballard?

A. No, sir.

Q. What is the next check?

A. Check No. 15467 made out to Arnold Blunt in the amount of $204.95.

Q. Was that check paid through your office?

A. No, sir.

Q. What is the next check which appears on the Freer Local Maintenance Fund?

A. Check No. 15466 made out to R. A. Turners in the amount of $264.46.

Q. And was that paid through your office?

A. No, sir.

Q. Do you know an R. A. Turners?

A. No, sir.

Q. What is the next check which appears?

A. Check 15472 paid out to P. M. Bowe, in the amount of $192.80.

Q. Was that check paid through your office?

A. No, sir.

Q. Do you know a P. M. Bowe?

A. No, sir.

Q. Was he employed in the Freer schools?

A. No, sir.

Q. Now, what is the date on which the Leroy, Ballard, Blunt, Turners and Bowe checks were cashed?

A. They were all cashed on November 6, 1951.

Q. What is the next name which appears there?

A. Check No. 15840 made out to N. M. Sarret in the amount of $204.75. That voucher is dated January 30, 1952.

Q. And was that check paid through your office?

A. No, sir.

Q. And do you know an N. M. Sarret?

A. No, sir.

Q. What is the next check which appears there?

A. January 30, 1952, check No. 15838 made out to G. P. Garrott in the amount of $247.40.

Q. Was that check paid through your office?

A. No, sir.

Q. How did Grace P. Garrott receive her checks? Under what name?

A. As Grace P. Garrott.

Q. Did she ever receive a check under the name of G. P. Garrott?

A. No, sir.

Q. What is the next check?

A. January 30, 1952, check No. 15839 made out to Mrs. B. I. Kinnard in the amount of $219.65.

Q. And was that check paid through your office?

A. No, sir.

Q. Do you know Mrs. B. I. Kinnard?

A. No, sir.

Q. What is the next check?

A. Check No. 15846 made out to Mrs. E. L. Clay in the amount of $221.10.

Q. Was that paid through your office?

A. No, sir.

Q. Do you know a Mrs. E. L. Clay?

A. No, sir.

Q. Was any Mrs. E. L. Clay working in the Freer schools in January, 1952?

A. No, sir.

Q. What is the next check?

A. Check No. 15844, C. M. Tomas in the amount of $210.65.

Q. Was that check paid through your office?

A. No, sir.

Q. Do you know a C. M. Tomas?

A. No, sir.

Q. What is the next check which appears there?

A. Check No. 15845 made out to C. B. Blunts in the amount of $202.35.

Q. Was that check paid through your office?

A. No, sir.

Q. Do you know a C. B. Blunts?

A. No, sir.

Q. What is the next check?

A. Check No. 15841 made out to J. L. Scogins in the amount of $216.95.

Q. Was that check paid through your office?

A. No, sir.

Q. Do you know J. L. Scogins?

A. No, sir.

Q. What is the next check?

A. Check No. 15842 made out to Robert Sparks in the amount of $305.05.

Q. Was that check paid through your office?

A. No, sir.

Q. Did you tell us that you had a teacher by the name of Sparks?

A. Yes, sir.

Q. What was his name?

A. I had a Kate Sparks.

Q. All right. What is the next check?

A. Check No. 15837 made out to S. M. Holme in the amount of $283.40.

Q. Was that check paid through your office?

A. No, sir.

Q. Do you know an S. M. Holme?

A. No.

Q. Do you have a Mr. Holme working for you?

A. Yes, sir.

Q. What was his name?

A. Sam Holme.

Q. And how was he paid?

A. As Sam Holme.

Q. What was the date that these checks to Kinnard, Clay, Tomas, Blunts, Scogins, Sparks and Holme were cashed?

A. They were cashed on February 19, 1952.

Q. Skipping down to check No. 15712, who was that issued to?

A. 15712.

Q. Yes. Who was that issued to?

A. To Pauline Weathers, in the amount of $227.05.

Q. Did you have a Weathers working at the school then?

A. Yes.

Mr. Foreman: May it please the Court, counsel has now developed—come right back to the point objected to, and I understood Court sustained the last three objections. He is suggesting, himself, to the jury—

The Court: By leading questions?

Mr. Foreman: And also the same thing the Court overruled as inference and conclusion.

The Court: The ruling of the Court was to bring out the fact indicated and the jury could make comparisons themselves to satisfy whether there is any similarity. It is something that may be done in argument. Counsel, in argument, may present as an argument that this name is similar to this name, but we are now proceeding with the testimony, and it is the opinion of the Court such questions are leading questions, and I instruct the jury not to consider them and instruct counsel not to lead the witness.

Q. (By Mr. Bottler) What is the next name which appears under Pauline Weathers?

A. Check No. 15716 made out to G. R. Sparkman in the amount of $305.05.

Q. Was that check paid through your office?

A. No, sir.

Q. Do you know G. R. Sparkman?

A. No, sir.

Q. Now, would you look at the rest of the names and checks which appear on this page, and tell the jury whether or not any of these checks were paid through your office?

Mr. Foreman: What page is this, please?

Mr. Bottler: It is the 12th page.

Mr. Foreman: Of Government's Exhibit 10?

Mr. Bottler: Of Government's Exhibit 10, the last numbered check on it is 19255 to A. L. Peters.

Mr. Foreman: The number again?

Mr. Bottler: 19255. The last check on the page. Since the interruption, I would like to ask that question again.

I will ask you to look at all the check on this page, including the ones that have not been asked about, and I will ask you whether any of these checks were paid through your office there in Freer?

A. They were not.

Q. Are any of the persons named as payees on these check, did any of them work out there at the Freer schools?

A. No, sir.

Q. All right. I will ask you to turn to the next page and Government's Exhibit 10, the last check being issued to A. M. Basilio as shown on that page.

The Court: You say the next page. What page is that, for the record?

Mr. Bottler: It is the 13th page of Government's Exhibit 10.

The Court: Very well.

Q. (By Mr. Bottler) The last name on that page being A. M. Basilio, check No. 19417, and ask you to inspect the checks shown on this page and tell the jury whether any of these checks were paid through your office for salary or work done at the Freer schools?

A. No, sir, they were not.

Q. I will ask you if, before this morning, coming into the courtroom, you examined your records and Exhibit 10 to familiarize yourself with the contents of Exhibit 10, with relation to your records?

A. Are you asking if I examined it this morning, or just previous to coming in?

Q. Yes, sir.

A. I examined it previously, yes.

Q. Turning to the next page, which is the 14th page of Government's Exhibit No. 10, the last check appearing thereon being check No. 15725 issued to Jose L. Beltran for $984.75, and I will ask you to tell the jury whether or not any of the checks shown on this page of Exhibit 10 were paid through the Freer office?

A. No, sir, they were not.

Q. I will ask the same question with reference to all of the checks shown on the 15th page of Government's Exhibit 10 under Freer Building Fund No. 1 as to whether

or not these checks were paid through the Freer school office?

A. No, sir, they were not.

Q. And I will ask you then to look at the next page, which is the 16th page, and tell the jury whether or not any of the checks shown under Freer Building Fund No. 1 were paid through your office?

A. No, sir, they were not.

Q. Now, turn to the 17th page, and would you examine the checks listed under Freer Local Maintenance Fund and, starting with the check dated December 18, 1952, I will ask you—

A. What was that date again?

Q. December 18, 1952, and I will ask you to examine these checks, and tell the jury whether any of these checks were issued through the Freer school office?

A. No, sir, they were not.

Q. Would you turn to the last page of Government's Exhibit No. 10, and the last check on such page being check dated June 30, 1953, check No. 19547 to the City Cut-Rate Store for $1109.80, and I will ask you to tell the jury whether or not any of those checks were paid through the Freer office?

A. No, sir, they were not.

Q. Now, who worked up the details of the budgets of the Freer schools in the years 1953—the school year 1953 to 1954?

A. I did the preliminary work on that with the trustees at Freer there.

Q. All right, and what was the amount of that budget for that year?

A. For 1953 and 1954, in round figures, it was $200,000.

Q. And when was that budget approved by the trustees?

A. Well, it would be previous to September 1953.

Q. All right. What was your budget figure for the year following, 1954 to 1955? That would be for the school year, September 1, 1954 to August 31, 1955?

A. That was in round figures approximately $278,000.

Mr. Bottler: All right. Your Honor, we would like to pass the witness, subject to recall.

3-718 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Reed, who were the members of the Benavides Independent School District Board of Trustees from 1949 through 1953?

A. Through 1953?

Q. If there was a change at any time and you knew about it, tell us.

A. At that time, W. C. Kelly, Paul Green and Earl DeLaney were on the board, and then Mr. DeLaney resigned and Mr. Troy Cary took his place.

Q. Now, you understood my question? I said the Benavides Independent School District Board of Trustees.

A. That is for the Freer members?

Q. No, sir.

A. In Benavides, Octavio Saenz was president of the board. I would not be too familiar with the other names.

Q. As a matter of fact, you had nothing to do, in the norml function of your office, although you were superintendent of schools at Freer, with the board as a whole, did you?

A. No, sir.

Q. When you think of, or though of, or even now attempt to recall the board, it only suggests to you the ones you actually operated with, the acual Freer members?

A. Essentially that is true, yes, sir.

Q. With reference to the time Mr. Earl DeLaney did serve and went off and was succeeded by Mr. Troy Cary, will you give us your best judgment as to the time when that was?

A. As near as I can recall, it would be around January of 1953, but I wouldn't—I am not sure bout that date.

Q. And Mr. Cary continued to serve until April 1, 1957, did he not?

A. Yes.

Q. Then Mr. Earl DeLaney was a member of the board in 1951?

A. No, sir.

Q. Do you recall any discussion with your end of the board in 1951, with Mr. Earl DeLaney, in which he stated that he, Earl DeLaney, had asked George Parr on behalf of the board to countersign the checks from that day forward?

A. No, sir.

Q. Do you know—were the checks sent to you for disbursement from Benavides?

A. Yes.

Q. Were they countersigned by George B. Parr after about the middle of 1950 or 1951?

A. I am not sure about the date, but there was a period of approximately a year or two years when they were countersigned by G. B. Parr.

Q. And prior to that time, prior to the time they were

countersigned by him, were they or not countersigned by W. M. Benson?

A. Yes, sir.

Q. Did that extend over a period of many years?

A. For several years.

Q. And after the period of a year or a year and a half, during which Mr. Parr countersigned them, when Mr. Parr did discontinue the countersigning, do you recall who commenced countersigning such checks?

A. Well, at that time, I believe, it is my recollection, that Octavio Saenz as president of the board and Diego Heras as secretary signed the checks.

Q. Did they not likewise sign the checks as makers all of the time even when Benson and Parr were signing?

A. Usually, yes, sir.

Q. Isn't it true, Mr. R. W. Milligan countersigned checks after Mr. Parr ceased?

A. For a period of time, yes.

Q. Even the Freer checks?

A. For about one year or less.

Q. And after he, do you recall who was the next person to countersign?

A. I countersigned them.

Q. You signed as maker and countersignator?

A. Who?

Q. Octavio Saenz.

A. Octavio Saenz signed as president of the board.

Q. I am talking about countersigning only. Do you know whether or not, speaking only of countersignature, whether after Mr. Milligan, someone else, I believe a temporary tax assessor, also a teacher—oh had been. I believe his name started with a P. Do you recall such an individual who countersigned the checks?

A. You are speaking only of a countersignature?

Q. Only of that.

A. No, sir.

Q. You don't recall who it was after Milligan?

A. I countersigned them after Milligan.

Q. You did.

A. Yes, sir.

Q. You countersign them now?

A. I do.

Q. Mr. Reed, do you know when the practice of countersigning first commenced, and by whose authority or direction, and who established the policy of whoever was the first one to countersign, assuming it was Benson?

A. Actually—may I put this down somewhere?

Q. Yes, sir.

A. Actually, I would say that, in a way of speaking, I was countersigning them up until the time that Mr. Parr countersigned them, and if there was only one signature as a maker, I would also countersign there.

Q. Would you say that Mr. Benson did not countersign the checks up until the day that Mr. Parr commenced?

A. I would say his signature appeared on there, yes, sir.

Q. So that I may understand the reference, may I have Government's Exhibit 17? Do you see the word "Countersignature" across the end?

A. Yes, sir.

Q. Isn't it true after the time Mr. Parr commenced signing as countersigner in the left hand as you face the check, the name W. M. Benson appears there up to the time of Mr. Parr?

A. I would say that would be substantially true, although I would not rule out the possibility he signed as maker.

Q. I did not ask that. I did not ask that at all.

Mr. Bottler: Your Honor, he is arguing with the witness and I am objecting to it.

Mr. Foreman: I am not undertaking to, Your Honor.

The Court: I think he was trying to explain to the witness the evidence that he wanted. You may continue.

Q. (By Mr. Foreman) Thank you. Now, would you—is this the place where I am pointing to where it says countersigned, that you also signed prior to Mr. Parr?

A. Not necessarily.

Q. Well, do you recall ever having signed up here on the countersignature prior to Mr. Parr?

A. I would not say I did not.

Q. You do not know either way?

A. I would not say definitely I did not.

Q. I am not asking you to say definitely anything. What is your best judgment, please, sir?

A. That I did not sign or I did sign it?

Q. To your best judgment, whether you did or not?

A. I would say previous to the time Mr. Parr's signature appeared there, I have signed there.

Q. Now, was that an occasion for you, or was it a practice?

A. It was more or less a practice, that if Mr. Benson's signature did not appear there, that I would sign there.

Q. I see, and now for the first time we are getting away from the countersignature and back to the maker's signature. Did you also from time to time each time one of those lines were blank, sign your name?

A. If the countersignature was right there, I would sign there (indicating).

Q. If the countersignature was already on the countersignature line, and the blank appeared either as acting secretary or as president—

A. I would not sign as president.

Q. You would sign under the president?

A. Yes, sir.

Q. If that appeared to be blank?

A. Yes, sir.

Q. Isn't it true frequently the checks would come to you where the maker's name was blank, and nothing but the countersignature signed?

A. I don't believe there would be an occasion where there would be only a countersignature and no maker at all. I don't recall there was any like that.

Q. Well, do you recall any when a given signature was there for the president and a blank for the lower line of secretary?

A. Yes, sir.

Q. And you would fill in as secretary your name?

A. Yes, sir.

Q. Meaning secretary of the Benavides Independent School District Board of Trustees?

A. Not necessarily meaning that because if they—if the word secretary is on there, which I am not sure whether it is or not, it would be crossed out.

Q. I didn't mean to imply you were attempting to misrepresent your official position, but at any rate you do see the word secretary printed, do you not?

A. Yes, sir.

Q. And on these checks, at any rate, you see the word "acting" typed in ahead, don't you?

A. Yes, sir.

Q. Well, whose name, as you recall a practice or custom or any specific instance, Mr. Reed, whose name would be on the first line when you would sign as maker on the secretary line?

A. Octavio Saenz as president of the board.

Q. All right. Now, had you ever signed a signature card, an authorized signature card at the Texas State Bank of Alice, or signed a Texas State Bank of Alice signature card either signed at the bank or not, but to be filed at the bank so as to authorize payment of the BISD checks upon your signature?

A. I don't know. I don't think so, but I would not say I did not at that time. That would be a period of 10 or 11 years ago, and I am not sure whether I did or not.

Q. It is difficult on five or six years ago to recall on occasions?

A. On one specific thing like that, it would be.

Q. Did I understand, getting back to the countersignature, the one across the end of the check at the side, that if there were no countersignature, you would sign your name at the countersignature place?

A. Yes.

Q. And would or not frequently the checks come with no countersignature?

A. Yes.

Q. And your recollection with reference to having been approved as a countersigner is likewise—do you have any recollection of having been approved by the board or by the bank?

A. No, sir.

Q. As a matter of fact, Mr. Reed, insofar as the Benavides end of the BISD Board of Trustees business was con-

cerned, it was a sort of a haphazard management in the issuance of checks until about February of 1954, wasn't it?

A. Well, it all depends on what you say is haphazard. As far as my checks were concerned, the invoices were in with them and I have a record or kept a copy of a list of the checks, and I know that these were issued according to what I sent in, but outside of that I have no knowledge of the operations of the business office or the issuance of their checks.

Q. As I phrased my question, I eliminated your activities at Freer and said insofar as the business affairs of the BISD, and I emphasized, I thought, the word Benavides. Isn't it true that the checks frequently came without a countersignature and without the maker being properly made out?

A. Are you speaking again of the Freer checks, or eliminating the Freer checks?

Q. I am talking about checks that would be sent back to you to be delivered to your teachers or the people to whom the Freer school owed the bills. I am not asking of the way you made out yours.

A. What was the question again?

Q. Isn't it true frequently, prior to February, 1954, the checks as they came back to you, back to Freer for distribution, personally or through the mails or however you distributed them, were not properly made out to the extent of missing countersignatures or missing maker signatures?

A. I would say that is substantially true.

Q. Do you have any knowledge, Mr. Reed, as to the formal education of either Mr. Santiago Garcia, Jesus Garza, Octavio Saenz or D. C. Chapa?

A. No, sir, I do not.

Q. You do not know whether D. C. Chapa went to school a day in his life or not, or whether he can read or write?

A. No, sir.

Q. And likewise you do not know how far the others may have gone?

A. No, sir.

Q. Did you ever at any time, from the time you became superintendent, in what year was it?

A. 1947.

Q. Until 1953 met with the board of trustees comprising the seven members?

A. About once a year. Not every year but possibly once a year, when the canvassing of the elections was held, we would meet at Benavides with them.

Q. What you mean is never oftener than once a year, and sometimes not even then, isn't that true?

A. Yes, sir.

Q. Thank you, sir. Well, do you know whether or not either Octavio Saenz, Santiago Garcia, Jesus Garza, or D. C. Chapa ever even saw any of the checks issued through the Freer office other than Octavio Saenz to sign his name to some of them?

A. I wouldn't have any knowledge whether they did or not.

Q. You don't know whether or not that list was ever presented, approved, or what became of it except you sent it in and the checks came back?

A. That would be my only knowledge.

Q. Now, with reference to these—this Government Exhibit 10 about which Mr. Bottler inquired at some length, and which purports to be a description or condensation

of information extracted from annual reports to the Central Education Agency of the State of Texas, did you yourself ever check those reports as they went in or before they went to Austin? By those reports, I mean those five exhibits, Mr. Reed?

A. No, sir, I did not. I have never seen those before they went to Austin.

Q. And you, of course, therefore had nothing to do with the typing of them so as to know whether there were typographical errors, either as to the names or as to the amounts?

A. No, sir.

Q. As a matter of fact, you know nothing about how or where they were prepared, do you?

A. As of that time, I did not.

Q. Did you ever know they were made at that time?

A. No, sir, I did not.

Q. Until you commenced testifying in these various cases, you did not know there were such reports, did you?

A. I wouldn't say until I testified, but after 1954 I knew that they were in existence.

Mr. Foreman: I see. That is all, Your Honor.

The Court: Will there be redirect examination?

Mr. Bottler: About two questions.

Mr. Foreman: Your Honor, I would like some sort of explanation, if I am entitled to it, as to what the District Attorney had reference to when he said that he was passing the witness subject to recall. Unless this is the recall,

the recall of this witness—we would like to know the rules under which we are to proceed as to whether or not he is to direct or conclude his case now, or whether he is holding back something designedly so that I may have advice in preparing cross examination.

Mr. Bottler: Your Honor, we are not holding back anything designedly. We ask that he be excused subject to recall with the view of obtaining a list of teachers which were employed at the school.

The Court: You mean subject to recall sometime after today?

Mr. Bottler: Yes, Your Honor. I don't believe he could get the list of teachers prepared so that it could be readily understood by the jury this morning.

The Court: It would be more orderly to defer that until he is ready to be excused.

Mr. Bottler: Yes, Your Honor.

The Court: Very well.

3-732 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Now, on cross examination, you testified that you had signed on some of the BISD checks, that is, you put your signature in either one of the spots for maker or countersignature, is that correct?

A. I believe that is right. When you speak of Benavides

Independent School District, you are referring to the checks? They are in two sections. There are the Freer division checks and the Benavides checks, and my signature would only appear on Freer division checks of the Benavides Independent School District.

Q. That was my next question. Did you ever sign on checks issued on Benavides funds for Benavides expenditures?

A. No, sir.

Q. Now, did you ever physically receive the Freer division checks which you paid out from Oscar Carrillo, Sr.?

A. Yes, sir.

Mr. Bottler: No further questions.

Mr. Foreman; Nothing further.

The Court: Now, I understand you want to excuse the witness subject to recall?

Mr. Bottler: Yes, sir.

The Court: Very well. You are excused subject to recall, and court will recess for 20 minutes.

(Short recess.)

The Court: Be seated, please.

Mr. Bottler: Recall Mr. Reed.

3-734 W. FRANKLIN REED,

being the witness who was on the stand at the time court recessed, resumed the stand at this time, and continued his testimony as follows:

3-734 REDIRECT EXAMINATION (CONTINUED)

Q. (By Mr. Bottler) Are you the same W. Franklin Reed who testified prior to the recess?

A. Yes.

Q. If you recall, I asked you certain questions concerning Government's Exhibit 10 and checks dated October 31, 1951. I will ask you, do you have records of checks which were paid for the period ending October 31, 1951, your salary checks?

A. Yes, sir, the Freer division checks?

Q. Yes, sir.

A. Yes.

Q. Could I see it please?

A. (Witness tenders document to counsel.)

Q. And do you likewise have the records for the period ending the end of February, 1952?

A. Yes, sir.

Mr. Bottler: Would you mark this please as Government's Exhibits 205-A and 205-B? Would you mark this please as Government's Exhibit 206-A and 206-B?

I will hand you what has been marked for identification as Government's Exhibits 205-A and 205-B and ask you whether you can identify this exhibit?

A. Yes, sir.

Q. All right. What is it, sir?

A. It is the work sheet that I made on the payroll for the month of October, 1951, for the teachers and other employees of the Freer public schools.

Q. When did you make up this work sheet?

A. It would be made up about a week prior to the end of the month in October, 1951.

Q. Turning your attention to the lefthand column on the sheet 205-A there appears a number on the extreme lefthand side at the top of that column?

A. The number is 15393.

Q. Where did you get this number?

Mr. Foreman: 15 or 16?

The Witness: 15393.

Q. (By Mr. Bottler) Where did you get this number?

A. That was the voucher number of the check issued to W. F. Reed.

Q. And on the next line is the number 94. What does that represent?

A. That represents 15394.

Q. When did you place those numerals on the extreme lefthand column of 205-A?

A. They were placed there when the checks came back from the business office, and were checked and disbursed to the teachers.

Q. Turning to the fourth column from the right on Government's Exhibit 205-A (under the heading "Net Salaries," there appears a check mark in each of the lines. When was that check mark placed there?

A. It was placed there when the checks were received from the business office, and the amount of the check

verified with this record before it was disbursed to the teacher.

Q. What was done with the checks which you received and checked off on this sheet?

A. They were disbursed to the teachers. Usually the elementary teachers would receive their checks from the principal. I would deliver them to the elementary school principal and he would deliver them to the teachers. The high school checks, I would usually deliver myself.

Q. All right, and did you receive and check every check which is shown on this worksheet?

A. Yes, sir.

Mr. Bottler: All right. We offer in evidence Government's Exhibits 205-A and 205-B.

The Court: Is there an objection?

Mr. Foreman: Just a minute, Your Honor. Let me see. Yes, Your Honor, it is the theory of the defense in this case that in no event, by any conception of the prosecution's case, as outlined in the indictment, could the conspiracy have continued beyond September 1952, and with the date of the last overt act charged in the first count of the indicatment, and therefore as to any acts or conduct or exhibits for the period of, I believe this is October—

Mr. Bottler: 1951.

Mr. Foreman: Oh, that is 1951. No, sir, that objection would not be a valid objection.

The Court: Do I understand you make no objection?

Mr. Foreman: No, sir.

The Court: Very well. Government's Exhibits 205-A and 205-B are admitted in evidence.

Q. (By Mr. Bottler I hand you for identification Government's Exhibits 206-A and 206-B, and ask you if you can identify them?

A. Is that the same thing?

Q. Yes.

A. I thought I had already identified it.

Q. No, for another month. I just took a month in 1952.

A. Yes, sir. I made those.

Q. What period of time do they cover?

A. They cover salaries for the month of February, 1952.

Q. When did you make up these worksheets?

A. About a week or ten days before the end of the month.

Q. Did you do this personally, or did someone else do it under your supervision?

A. I did it personally.

Q. Drawing your attention to the number in the upper lefthand corner, 15861, I will ask you to tell the jury where you got that number?

A. I got that from the voucher number on the check which was issued to W. F. Reed in February, 1952.

Q. The name appearing immediately beneath that, Elton Bohmann, does not have a number affixed to that. For what reason did you leave off the number?

A. I didn't put in all those numbers on there. Usually those checks I would get from the business office, I would get on the date issued and I didn't take the time to put in every number, but several of the numbers so I would un-

derstand, unless I had made a definite note there, the next number to the one above it would apply.

Q. Turning your attention again to the fourth column from the right, a check mark appears, and I will ask you whether or not you placed that check mark on there?

A. I did, when the amount of the check was checked against the record.

Q. All right. All the checks shown on this worksheet were received by you and distributed in the regular course of Freer school business?

A. Yes, sir.

Q. All right.

Mr. Bottler: The Government offers into evidence Government's Exhibits 206-A and 206-B.

Mr. Foreman: No objection.

The Court: They are admitted in evidence.

Mr. Bottler: No further questions.

3-739 RECROSS EXAMINATION

Q. (By Mr. Foreman) Can you, by examining these two exhibits—where are they, please?

Mr. Bottler: The jury has them.

Mr. Foreman: I don't need the exhibits to ask the question.

Can you by examining those exhibits, determine which, if any, of these particular checks for these particular months were not countersigned or were not signed sufficiently by the maker so as to require you to have to, in your opinion, countersign them or complete the signature as maker?

A. No, sir.

Q. Is it possible that some of them were, or did you make any notes when such here occurred?

A. No, sir.

Q. If you just saw a check that was insufficient as to countersignature or to maker, you would write your own name there in the blank place?

A. As a countersigner.

Q. Either countersigned or as—

A. Yes.

Q. —as maker on the signature line?

A. Yes, sir.

Q. But other than to carry it in your head, you did not reveal it back at the office at Benavides, or make a note even on the payroll?

A. No, sir.

Q. As far as that is concerned, there may be half a dozen or more of these checks which were insufficient?

A. What do you mean by insufficient?

Q. In signature, not amount.

A. You mean it is possible some of these checks did not have their signatures on them?

Q. Yes, sir.

A. That would be right.

Q. Do you know whether any of them had their signatures on them?

A. I wouldn't remember a definite check in 1951 to say whether it had three or two.

Q. I was speaking about the whole roll. Do you sometimes get a whole roll insufficient as to signatures?

A. I would think sometimes I would have checks that would have only two signatures on them. Whether in this month of October, 1951, I don't know.

Q. Sometimes all of them would come back without enough signatures to complete the checks?

A. They would not have three signatures, but they would be valid at the bank.

Q. Did you always complete them by adding your name?

A. I would countersign the check.

Q. By countersigning—

A. I will qualify that in this respect: There was a period of time when Mr. Milligan was countersigning the checks when I did not countersign them.

Q. Before Mr. Milligan started countersigning—do you use that term interchangeably, both counter-signature and down at the maker?

A. Yes.

Q. You would sign wherever there was a place blank? You would write W. F. Reed?

A. That is right.

Q. Now, this payroll record is made alphabetically save and except to yourself. It is always headed by yourself?

A. It is made alphabetically by high school and elementary and by auxiliary employees, so actually it is not alphabetical. It is alphabetical, but about three lists in one.

Q. As to the superintendent and the two principals—

A. They would head the list.

Q. That is not alphabetical, because Bohanan would come ahead of Reed—

A. It is Bohmann.
Q. Bohmann?
A. Yes.
Q. Thank you, Mr. Reed. That is all.

Mr. Bottler: No questions.

The Court: Do you still want to excuse this witness subject to recall?

Mr. Bottler: No, Your Honor, this is the only matter we wanted to go into. He may be excused as far as the Government is concerned.

The Court: It is now ten minutes after eleven and, as previously announced, we will recess this trial at twelve o'clock today. Have you another witness you can probably finish with by twelve o'clock?

Mr. Bottler: Yes, Your Honor.

The Court: Very well.

Mr. Bottler: He will be very short as far as the Government is concerned, I cannot speak for Mr. Foreman.

The Court: I will not require you to call one you can finish by twelve, but if you can have one we can finish by twelve it will be desirable so as not to have him come back next week.

Mr. Bottler: Yes, Your Honor. I am sure we can get through with him.

3-743 ESPIRIDION MARTINEZ,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified through the interpreter as follows, to-wit:

3-743 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?
A. Espiridion Martinez.
Q. Where do you live?
A. Alice, Texas.
Q. And by whom are you employed?
A. R. S. Truck Company. R&S.

The Court: R&H?

The Interpreter: S, like Sam.

The Court: R&S, thank you.

Q. How long have you been employed by them?
A. Thirty years.
Q. How long have you lived at Alice?
A. Since October 17, 1948.
Q. Where did you live prior to moving to Alice?
A. In Benavides, Texas.
Q. What is your position with the R&S Truck Company?
A. I am the superintendent.
Q. Has the R&S Truck Company ever done any work for the Benavides Independent School District either in Benavides or in Alice?

A. No, sir.

Q. Have you ever done any work for the Benavides Independent School District?

A. No, sir.

Q. I will hand you Government's Exhibit 18 and turn your attention to the back thereof, and ask you if this is your endorsement on the back of Exhibit 18?

A. No, sir.

Q. Did you ever receive this check?

A. No, sir.

Q. Did you ever cash it?

A. No, sir.

Q. Did you ever supply any pipe for fence to the Benavides Independent School District?

A. No, sir.

Mr. Foreman: Mr. Bottler, supply any what, sir?

Mr. Bottler: Pipe for fence.

Mr. Foreman: Thank you. What is that? G-what?

Mr. Bottler: 18

Q. (By Mr. Bottler) Do you know anyone else by the name of Espiridion Martinez?

A. My son.

Q. Anyone else either in Benavides or Alice?

A. Not to my knowledge.

Q. Where was your son in March of 1951?

A. He was in the army.

Q. Whereabouts?

A. At that time, he was training in Texas, and soon after that he left for Germany.

Mr. Bottler: The Government offers Government's Exhibit 18.

Mr. Foreman: We join the Government in offering this exhibit, Your Honor.

The Court: Very well. Government's Exhibit 18 is admitted in evidence.

Mr. Bottler: No further questions.

3-746 CROSS EXAMINATION

Q. (By Mr. Foreman) When did you learn your son was in Germany in March of 1951, Mr. Martinez?

A. At that time he was in Texas training, but after that he left for Germany.

Q. Thank you. Now, when did you learn Mr. Martinez that your son was in the army in March of 1951?

A. I don't exactly remember when I learned that.

Q. Mr. Martinez, have you rehearsed or memorized the answers to certain questions to be given here today?

A. No, sir.

Q. Did you or not make an answer in exactly the same words twice to me, and in exactly the same words a third time to Mr. Bottler without changing a syllable as to "My son was in training in Texas, and he later went to Germany?" Didn't you say that three times in the identical language?

A. All I can tell you is that my son was 17 months in Germany, and I don't remember the date when he was in Texas.

Q. Do you know when he went into the army?

A. I don't remember.

Q. Do you know even what years he was in the army?

A. Exactly, no.

Q. And wasn't that your testimony in November, that you did not know what years he was in or where he was, or whether he was in Alice or Duval County in 1951?

A. No, sir.

Q. Now, how many other Martinez by the family name of Martinez are there in Jim Wells and Duval Counties, Mr. Martinez?

A. To my knowledge, none others.

Q. No other Martinez except you and your son?

A. Of my family that is all.

Q. I am not speaking of your family, please, sir. I am speaking of anybody's family by the last name of Martinez?

A. I believe you can find a thousand, but I do not know them.

Q. Then there may be another 200 Espiridion Martinez, may there not?

A. Probably so.

Q. Probably so. Well, now, were there any of the others —any of the other Espiridion Martinez subpoenaed here today? Have you seen any of them out here in the hall?

A. To my knowledge, no, sir.

Q. Is even your son, Espiridion, Jr., here?

A. No, my son is in Alice, Texas.

Q. Has he been subpoenaed, so far as you know, in this case?

A. No, sir.

Q. Now, do you know one Diego Heras?

A. Yes, sir.

Q. Does Diego Heras know you?

A. Yes.

Q. Do you know Diego Heras signature?

A. I believe I do.

Q. Do you know an H. Q. Heras, Diego's cousin?

A. Yes.

Q. And what does H. Q. Heras, Diego's cousin, do?

A. He has been justice of the peace in Benavides, and also secretary to the City of Benavides.

Q. That is not the H. Q. Heras I am talking about. Do you know—I am not talking about the justice of the peace H. Q. Heras, but the one that works at the City Utilities. Do you know him?

A. He used to be there, and that H. Q. Heras has also been justice of the peace, as I already told you. It is the same one.

Q. There are not two?

A. To my knowledge, only one.

Q. All right. Then, is that the H. Q. Heras with whom Diego Heras moved into office with after leaving the Benavides Independent School District tax office?

A. That I do not know.

Q. Does he or not have an office in the Heras Building in Benavides?

A. I do not know.

Q. Is this check, Government's Exhibit 18, just offered, having the name Espiridion Martinez on it signed by Diego Heras?

A. I am not an expert, a handwriting expert. I see the name written there, but I don't know that he wrote it.

Q. Without being a handwriting expert, do you know the signature of Diego Heras so as to be able to identify that particular signature from the knowledge of the signature as such?

A. It looks like his signature, but I couldn't swear to it.

Q. That is all right. Now, do you know H. Q. Heras' signature as such so as to be able to identify it, even though you are not an expert?

A. It looks like it, but I couldn't swear to it, if he did sign it.

Q. When you say it looks like it, you are speaking of the words H. Q. Heras on the back of Government's Exhibit 18, under City Utilities, aren't you?

A. Yes, that is the one.

Q. Is this H. Q. Heras a cousin of this Diego Heras?

A. He is related to him, I don't know how close.

Q. And of course, do you know a man in Benavides named Diego Navejar, N-a-v-e-j-a-r?

A. No, sir.

Q. Do you know one in San Diego named Diego Navejar?

A. No, sir.

Q. Do you know whether or not Diego Heras endorsed this Espiridion Martinez on the back of this check that was given to the City Utilities?

A. No, sir. I do not know. I know I did not sign it, that is all.

Q. When you sign your name, how do you write your first name?

A. Just the way I pronounce it, Espiridion Martinez. Do you want to see how I sign it? I can sign any paper you want, and you can make comparison.

Q. I m not suggesting or inferring or tending to establish that you signed this, sir.

(Counsel tenders a piece of to the witness who writes upon it. The document is thereupon tendered to the Clerk who marks it Defendant's Exhibit 201.)

Q. Thank you, sir. Now, this is spelled out in full, E-s-p-i-r-i-d-i-o-n?

A. Right.

Q. Isn't it. And did you ever spell it E-s-p-e-e-d-y?

A. On my business cards, I have "S-p-e-e-d-y," just a little way of advertising my name.

Mr. Bottler: Just for the sake of the record, I believe we ought to get into evidence Defendant's Exhibit 201 prior to going to the jury. We will join in the offer, if any is made, of Defendant's Exhibit 201.

Mr. Foreman: I gave it to the Clerk, gave it to the stenographer, to mark, and I am sorry not to have formally advised the District Attorney.

The Court: Very well. Defendant's Exhibit 201 is admitted in evidence.

Q. (By Mr. Foreman) When you write Speedy in Spanish, do you put the E in front of it?

A. I put the capital E comma, and then the word "speedy" in English, "S-p-e-e-d-y."

Q. And your son does the same?

A. Sometimes.

Q. Did you authorize Diego Heras to sign your name to that check?

A. I have never seen that check, and I have never authorized him.

Q. Did you authorize him to sign your name at will, whether it was to that check or not?

A. No, sir.

Mr. Foreman: That is all, Your Honor.

Mr. Bottler: No further questions.

The Court: Very well. You may step down. The Government may call its next witness.

3-752 FRANCISCO SANCHEZ,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified through the interpreter as follows, to-wit:

3-752 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?

A. Francisco Sanchez.

Q. Where do you live?

A. I live in Alice?

Q. Alice, Texas, Jim Wells County?

A. Yes.

Q. How long have you lived in Alice?

A. I moved to Alice in 1951.

Q. Where did you move from?

A. I lived in Benavides.

Q. When, in 1951, did you move to Alice?

A. I am not positive whether it was in May or June of 1951.

Q. All right. Now, do you know Octavio Saenz?

A. Yes, sir.

Q. Did you ever work on any work for the Benavides Independent School District?

A. Yes, sir.

Q. Who gave you that job?

A. Octavio Saenz.

Q. When did you work for the School District?

A. In March of 1951.

Q. How long did you work for the School District in March of 1951?

A. About two weeks only.

Q. How were you paid, by check or by cash?

A. I was paid in cash.

Q. Who paid you in cash?

A. Octavio Saenz.

Q. How much money did he pay you in cash?

A. $65.

Q. All right. Have you ever worked for the Benavides Independent School District other than the time you worked two weeks on the census in March 1951?

A. No, sir.

Q. What work did you do on the school census?

A. I used to get the names of the children that were of schooling age?

Q. What ages?

A. From six to 18 years old.

Q. And in what place did you take this census?

A. House-by-house.

Q. Where?

A. In Benavides.

Q. Did you check all of the houses in Benavides, or only part of them?

A. Well, I checked every house, but I found in many cases there were no families in the house.

Q. Now, did you take the names of the children of school age only if they went to the public school, or did you take them regardless of whether they went to the public school or the Catholic school at Benavides?

A. I took the names of all the children that attended public school, and in many cases they gave me the names of the ones that were attending Catholic schools.

Q. How many names did you get in that two-week period in March 1951?

A. Exactly, I don't remember.

Q. To your best recollection?

A. I can't fix the number.

Q. All right. I will hand you what has been marked for identification as Government's Exhibit 21, and ask you to look on the reverse side of it at the endorsement that appears thereon, and ask you if you signed the endorsement on this check?

A. No.

Q. Did you receive this Benavides Independent School District check for $225?

A. No, sir.

Q. Did you cash it?

A. No.

Q. All right. I will show you what has been marked for identification as Government's Exhibit 20.

Mr. Foreman: Is that the check, No. 20?

Mr. Bottler: Yes.

Mr. Foreman: The same check?

Q. (By Mr. Bottler) I ask you to look at the reverse side of it and ask whether you endorsed this check?

A. No.

Q. Did you receive this check of the Benavides Independent School District for $24?

Mr. Foreman: Pardon me. I am confused. Is it two checks you are asking about, or just one?

Mr. Bottler: Two. The first was No. 21 and this is Government's Exhibit 20.

Mr. Foreman: I am sorry.

A. No, sir.

Q. (By Mr. Bottler) Have you ever received any checks from the Benavides Independent School District?

A. No.

Q. I wll now show you Governmenit's Exhibit 110-UU and ask you to look on the reverse side of it, and ask you whether you endorsed this check?

A. It looks like it, but I am sure it is not mine.

Q. Did you receive a check from the Benvides Independent School District in the summer of 1951 for $185?

A. No, sir.

Q. Did you cash such a check?
A. No, sir.

Mr. Foreman: What is this exhibit, please?

Mr. Bottler: 110-UU.
Q. I wonder if you would write your signature on this blank piece of paper?
A. I feel nervous, but give me a little time.

(Counsel tenders a blank piece of paper to the witness, who descends from the witness stand to the court reporter's table,)

Mr. Foreman: To save time may we ask that he write, it four times or five?

The Interpreter: He is not very much accustomed to using a pen. Are four times enough, Mr. Foreman?

Mr. Foreman: Yes, I am going to ask him to write with a pen also so I will—while he is sitting there we can save time. That was with a pencil. Write it four more times with a pen.

The Interpreter: How many more times? Three?

Mr. Foreman: That is enough. Thank you, Mrs. Logan.

Mr. Bottler: Would you mark this as Government's Exhibit 207?

(The sheet of paper above-referred to was tendered to the Clerk and marked as Government's Exhibit 207.)

Q. (By Mr. Bottler) How long had you lived in Benavides prior to moving to Alice in the summer of 1951?

A. All my life.

Q. Was any other person by the name of Francisco Sanchez living in Benavides in 1951 prior to the time that you moved there?

A. Not that year, sir.

Q. All right. The Government now offers Exhibits 20, 21, 110-UU, and Government's Exhibit 207, being the signature of Francisco Sanchez.

Mr. Foreman: May it please the Court, as to Government's Exhibit 110-UU, we submit that in its present form a proper predicate has not been laid for its being introduced. It has not been authenticated, and it appears and purports to be not an original entry at all or an original item, but a picture thereof, and for the reasons stated we object to those being received at this time. We join the Government in offering Government's Exhibit 207, and we have no objection to the introduction of Government's Exhibits 20, 21, and 207 are admitted in evidence. What Exhibits 21 and 20 except as to the objection we have a running bill to, the remoteness, they both being prior to the date September 1, 1951.

The Court: Very well. Government's Exhibits 20, 21, and 207 are admitted in evidence. What says the Government as to the objection to the Exhibit 110-UU?

Mr. Bottler: We will withdraw the offer of it and submit it later, Your Honor.

The Court: Very well, sir.

Mr. Bottler: No further questions.

3-758 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Sanchez, how many people with the last name Sanchez, either related to your or not, live in Duval, Jim Wells, or adjacent counties?

A. I don't remember how many. There was a family when I lived in Benavides by the same name of Sanchez, although they were not related to me and they have left Benavides. They don't live there any more.

Q. Do you know them other than you know the last name?

A. I was acquainted with the man of the house.

Q. How old was he?

A. He was a mature man up in years, but I do not remember his age.

Q. Sixty, or could he have been sixty or more?

A. More or less. He looked that way to me.

Q. Do you know whether or not he had several sons?

A. Yes, he had several children.

Q. Do you know their names?

A. I knew them at the time, but I don't remember them now.

Q. You say that there was no other Francisco Sanchez in Benavides except you?

Mr. Bottler: Your Honor, I am sure counsel does not mean to misquote the testimony, but the question was directed to the year 1951.

Q. (By Mr. Foreman) All right. The year 1951. Was there or not another Francisco Sanchez living in Benavides?

A. To my knowledge, I was the only Fraincisco Sanchez.

Q. Could there have been another Francisco Sanchez in the City of Benavides in 1951 other than yourself?

A. I don't remember.

Q. By that you mean, you do not remember whether there was or not, or you do not remember such a person?

A. I don't remember is all.

Q. Well, to help refresh your memory, do you know Rufino Sanchez?

A. Yes, I knew Rufino.

Q. To further help refresh your memory, do you know his son Francisco?

A. It has been 16 or 17 years, and I know that man and I never knew he had a Francisco.

Q. Well, to further help refresh your memory, do you know whether Francisco Sanchez of Benavides, the son of Rufino Sanchez, was here in this courtroom on the second floor around there last November when we tried this case, to appear, whether he did or not, as a witness in this case?

A. No, sir, I don't remember.

Q. Now, is it your testimony, please, sir, that the only Sanchez family in either Jim Wells or Duval County other than the one in the hall, in 1951, was the one in Alice that you referred to a while ago, that there were no other Sanchez in either of these counties?

A. To my knowledge that is true. I wouldn't know.

Q. And you do not know whether there were a dozen or more families by the name of Sanchez in those counties, do you?

A. I don't know if there were any more.

Q. And as far as you know, there may be at least twelve other Francisco Sanchez, might there not?

A. I don't know any one.

Q. All right. Now, Mr. Sanchez, you stated you started the census work in March of 1951. When did you do your last work on the census?

A. I finished my work in two weeks.

Q. And you did not do any work on it as far as late as into June and even the first week of July?

A. No, sir.

Q. Did you or not go into the country looking for scholastics, and in doing so use rental automobiles?

A. Yes, sir, I did go and I used a car.

Q. And you made several such trips on different days during those two weeks, did you not, sir?

A. Yes, I made a few trips.

Q. And who furnished you the rented automobiles in which you went into the country around Benavides?

A. There was a little car Octavio Saenz gave to me, loaned it to me.

Q. How many days did you use it?

A. I don't remember how many days.

Q. Mr. Sanchez, referring for a minute to the name Sanchez, do you know Pedro Sanchez of San Diego?

A. No.

Q. Do you know Ernio Sanchez of San Diego?

A. No.

Q. Do you know where Copita, Texas is?

Mr. Bottler: How do you spell that?

The Interpreter: C-o-p-i-t-a.

Q. Do you know where that is? A little community with probably no post office, but known was Copita?

A. I don't remember having seen that ranch.

Q. Then you did not—"having seen that ranch"?

A. Yes.

Q. Do you know that there is such a ranch as Copita, Texas, upon which one of the senior ranch employees is Santiago Sanchez?

A. I don't know.

Q. You don't know whether he has one son named Luis Sanchez and one son named Francisco Sanchez?

A. I don't know.

Q. You stated you were only paid in cash for your work in March 1951 by Octavio Saenz, and the amount was $65?

A. Yes, sir.

Q. He did not write you any personal checks, but only paid you in cash?

A. Yes, that is all I received from him, cash.

Q. Did you ever, at any time, either in that month or at any other time that year or any other time receive any checks from Octavio Saenz?

A. Not to my knowledge, sir, I don't remember.

Q. And you would recall if you did, would you not, sir?

A. Maybe, but I don't remember ever having received any.

Q. Without regard to any other time, limiting it to March of 1951, did you receive any personal check from Octavio Saenz?

A. I don't know. I don't remember, and I said it could be, but I don't think I did. I would remember if I did.

The Court: Mr. Foreman, it is now twelve o'clock. Do you think you will be able to finish this witness?

Mr. Foreman: It will be extended, Your Honor.

The Court: Very well, then. I am going to adjourn this trial until Monday morning. I will again instruct the jury that you should not discuss this case with anyone, nor permit anyone to discuss it with you. If anyone attempts to discuss it with you, ascertain who it is and report it to the Court, but even though you are unable to ascertain who it is, it should nevertheless be reported to the Court.

You have now heard some but not all of the evidence, you are instructed that you shall not reach any conclusion regarding this case until you have heard all of the evidence and the argument of counsel and the charge of the court, and you are further instructed you should not discuss the case with each other until you have heard all of the evidence and the argument of counsel and the charge of the Court.

You are further instructed that you should avoid reading newspaper accounts of the trial. You are in a better position to learn about this case here in the courtroom than from the newspapers. You should avoid, as well as you can, listening to radio or TV broadcasts, telecasts, but if you do, should inadvertently read anything or hear anything about it, you are instructed you should remove what you

may read or see from your thinking because when and if the case is finally presented to you, it will be presented to you on what you learn about this case from competent evidence in the courtroom and competent evidence alone. When I say competent evidence, I mean only admissible evidence. You will be instructed to rule out of your thinking anything that is ruled inadmissible.

With those instructions, the jury will be, and is, excused until 9:30 Monday morning. Checks for your services have been prepared and will be disbursed to you for your services up to and including today.

This trial is adjourned until 9:30 Monday morning. Court will reconvene at 2:00 p.m. to conduct other business of the court.

4-766 MORNING SESSION—MAY 13, 1957

The Court: Be seated, please.

I believe we had a witness on the stand?

Mr. Foreman: Francisco Sanchez, Your Honor.

The Court: Before we commence, I want to annunce that we will work five full days of this week, Monday through Friday, and I want some progress made with the trial of this case. When the week is ended, I want a full week's work. You may continue.

4-766 FRANCISCO SANCHEZ,

being the witness who was on the stand at the time court recessed on May 10, 1957, resumed the stand at this time and continued his testimony through the interpreter as follows:

4-766 CROSS EXAMINATION (CONTINUED

Q. (By Mr. Foreman) The last question, Mr. Sanchez, had to do with how you were paid. My question was, "Did you receive a check for any part of your census taking in March, 1951?"

A. In cash all.

Q. Cash only?

A. All.

Q. And you stated the total amount of cash you received, meaning the total amount of payment altogether was how much money?

A. $65.

Q. Did you do any work for either the Benavides school board or Mr. Octavio Saenz, any other work, in March of 1951?

A. No, that was the only work I did.

Q. Then, did you at any time, in January, February, March, April or May of 1951, do any other work for him except census work?

A. That was the only work I did.

Q. And the only way that you received any money from him whatsoever was in cash during the first four months of 1951?

A. Yes, sir.

Q. Did you ever see this before? (Tendering a check to the witness.)

A. No, sir.

Q. Is this your signature?

Let me have this marked for identification so that we may identify what it is that he says he has never seen.

(Check tendered to the Clerk and marked Defendant's Exhibit 202 for identification.)

Q. Now, the paper that you never saw before is now marked Defendant's Exhibit 202, is it not?

A. I bet to state that I had forgotten. I do remember having signed this $10 check. This check was given to me as an advance toward the final payment if census work, but I had forgotten.

Q. You only remembered it after it was presented to you?

A. Yes.

Q. Have you ever received any other checks from Mr. Saenz oher than this check?

A. I don't remember.

Q. Then you don't know whether or not you received three or four other checks or not from Mr. Saenz in addition to the $65, do you?

A. I don't remember having received those checks, but if he had given me any check it was just an advance toward the final payment of the census check.

Q. And there may have been as many as three or four such checks or five?

A. I don't know.

Q. Did you ever give Mr. Saenz any money?

A. When he gave me the cash for the final payment, I had to give him back whatever he had advanced to me.

Q. And how much was that?

A. I don't remember.

Q. When and where—we offer the check dated March 17, 1951, No. 533 on the Merchants Exchange Bank for $10 payable to F. Sanchez and made by Octavio Saenz.

Mr. Bottler: No objection.

The Court: Is that Defendant's Exhibit 202?

Mr. Foreman: Yes, Your Honor.

The Court: It is admitted.

Q. (By Mr. Foreman) Let me get straight your last answer, Mr. Sanchez. You state that however many checks Octavio Saenz may have given you in March of 1951, you returned the money of those checks when he finally gave you cash?

A. Do you refer to the last payment of $65?

Q. I am asking you for the facts as you recall them, please, sir. I am referring to nothing except the way I phrased my question.

A. Yes, sir, when he made me the liquidation of my work, as I stated before, I had to give him back the money that he had advanced.

Q. And do you recall whether that amounted to approximately $185?

A. No, sir.

Q. You do not recall?

A. It wasn't that way at all.

Q. How much had he advanced that you know about, or is your best recollection?

A. I don't exctly remember how much I asked him to advance me, but it was not much.

Q. Do you know in how many different checks whatever the amount he advanced was given to you?

A. No, I don't remember. They were small amounts.

Q. Getting down, Mr. Sanchez, to the final balancing when you state that he gave you cash and you gave him cash back, is that the way the final adjustment between you and Mr. Saenz occurred? Did he give you so much cash, and did you hand him back some of the same cash?

A. Yes.

Q. Then tell the jury how much cash Mr. Saenz gave you, as to whether or not it was—and how much you paid him back?

A. I already stated, he paid me $65, but I do not remember the amount that I had to refund back to him.

Q. Then whatever you refunded back to him was out of the $65 that he paid to you?

A. Yes, that is how it happened. I paid him back.

Q. Did you endorse either of the checks—how many checks—did he give you checks at any time, or only cash?

A. Sometimes he gave me checks.

Q. This was in 1951 that sometimes he gave you checks?

A. Yes, when I went to work for him.

Q. And where did you cash the checks that he sometimes gave you in 1951?

A. I remember having cashed some at the bank. The others I do not remember.

Q. Do you remember having cashed any in the City Utilities?

A. I do not remember.

Q. Do you recall ever having cashed any at the Vaello Lumber Company?

A. No, sir.

Q. Do you recall that you did not cash any at the Vaello Lumber Company or the City Utilities?

A. I remember clearly that I never went to Vaello Lumber Company to cash them, but I do remember having gone to the bank.

Mr. Foreman: May I have Government's Exhibits 20 and 21? They are two checks payable to this man by the Benavides Independent School District.

(The above-mentioned doucments tendered to counsel.)

Q. (By Mr. Foreman) Is this your signature?

A. No, sir.

Q. Is this your signature?

A. No, sir.

Q. Where is the exhibit, please, Mr. Clerk, that the witness made—I don't know the number of it. Government's Exhibit 207.

This is a copy of your signature? (Tendering document to witness.)

A. Yes, sir.

Q. You state that that and this (indicating) is not made by the same person?

A. Yes, I say it isn't.

Mr. Foreman: We pass them to the jury, Your Honor.

Q. (By Mr. Foreman) With reference to the last one about which I asked you, being Government's Exhibit No. 20, the BISD check payable to Francisco Sanchez for $24 purportedly for labor or a repair job, now, I am pointing now to the endorsement, and do you state that that is not your signature? That is correct, isn't it?

A. No, sir.

Q. And it was cashed at the—the endorsement on it is City Utilities by H. Q. Heras; isn't it?

A. No, sir.

Q. That is the endorsement under the supurious signature, isn't it?

A. It is not my signature.

Q. I understand, but just for the record, it does have under the City Utilities by H. Q. Heras?

A. Yes.

Q. Now, did you authorize Diego Heras to sign Francisco Sanchez to that check?

A. No, sir.

Q. Mr. Sanchez, getting back to the identity of your being the only Francisco Sanchez that you know about, were you not married to the aunt of an adult male named Francisco Sanchez?

A. Yes.

Q. And wasn't that Francisco Sanchez born about October 5, 1907?

A. I do not know.

Q. Didn't that Francisco Sanchez live in Benavides until just two or three years ago when he moved to Sandia near Sinton, isn't that true?

A. No, sir.

Q. When did you last see either Francisco Sanchez, your nephew by marriage—

A. It has been a long time ago.

Q. Didn't you see him here last November when he was under process in this case?

A. No, sir.

Mr. Foreman: That is all from this witness, Your Honor.

4-774 REDIRECT EXAMINATION

Q. (By Mr. Bottler) When did the Francisco Sanchez who now lives in Sinton leave Benavides?

A. I don't remember the year. I haven't seen him in either 16 or 17 years.

Q. Have you seen him in Benavides in 16 or 17 years?

A. No, sir.

Q. Now, when was the last time you worked for the Benavides Independent School District on this census work, or Octavio Saenz?

A. March of 1951.

Q. And when did you move to Alice?

A. The same year, either in May or the first part of June.

Q. And did you see Octavio Saenz—strike that. Did you do any work for Octavio Saenz or the School District in September?

A. You mean in 1951?

Q. Yes.

A. No, sir. I was already living in Alice by that time.

Q. Have you ever done any of the census work at all for—except for the two weeks that you did in March for Saenz and the Benavides Independent School District?

A. No, sir, that was all.

Mr. Bottler: No further questions.

4-775 RECROSS EXAMINATION

Q. (By Mr. Foreman) Then, did you know that Francisco Sanchez when you told us last Friday that there wasn't any other Francisco Sanchez in that area? You knew he—

Mr. Bottler: Your Honor, I believe he was asked specifically with reference to the year 1951. That was his testimony.

Q. (By Mr. Foreman) What was your testimony last Friday with reference to knowing any other Francisco Sanchez in the Benavides area?

A. I hadn't seen him in so many years, I did not remember. That is why I didn't tell you.

Mr. Foreman: That is all.

4-775 FRANCISCO CARRILLO,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified through the interpreter as follows, to-wit:

4-775 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?

A. Francisco Carrillo.

Q. Have you been sworn?

A. Yes, sir.

Q. And where do you live?

A. In Benavides.

Q. How long have you lived in Benavides?

A. All my life.

Q. Do you know D. C. Chapa?

A. Yes, sir.

Q. Are you related to him in any way?

A. He is my first cousin.

Q. All right. Have you ever worked for the Benavides Independent School District?

A. Yes, I did some work in the school.

Q. All right. Who employed you to work in the school?

A. Jesus Garza is the one that employed me there.

Q. How were you paid, by cash or by check?

A. He paid me in cash.

Q. And in what year did you do that work at the School District for Mr. Garza?

A. I don't remember the year, sir.

Q. Was it prior to 1954?

A. I believe it was, but I am not quite sure.

Q. All right. Have you ever done any work for anyone in the School District after 1954?

A. No, sir.

Q. Have you ever done any work for R. W. Milligan?

A. Either in 1954 or 1955, Mr. Milligan gave me a job for two weeks only.

Q. I will hand you what has been marked for identification as Government's Exhibit 19, being a check from the Benavides Independent School District dated March 12, 1951, pay to the order of Francisco Carrillo, $30, and I will turn it over and ask you whether the endorsement on the back of it is your signature?

A. No, sir, I never saw it.

Q. Did you receive this check?

A. No, sir.
Q. Did you cash it?
A. No, sir.

Mr. Bottler: The Government offers in evidence Government's Exhibit 19.

Mr. Foreman: Except for the objections we already have as to dates, Your Honor, we are not objecting.

The Court: Very well. Government's Exhibit 19 is admitted in evidence.

Q. (By Mr. Bottler) What education do you have?
A. I think I only went to the third grade, maybe less.
Q. Did you receive a check in 1952 from the Benavides Independent School District for $480 for carpentry work?
A. No, sir.
Mr. Foreman: How do you identify that other than the amount, Mr. Bottler?
Mr. Bottler: I asked if he received a check in 1951 for $480.
How much cash did you receive from Mr. Garza at the time you worked for him?
A. He gave me two weeks work at the rate of $6 per day. That was all.
Q. What job did you work on?
A. Five days a week only. We were repairing the school, the roof of the schoolhouse; putting some tar on.

Mr. Bottler: No furher questions.

Q. (By Mr. Foreman) The exhibits about which you have just been asked, the $30 check, appears to be dated March 12, 1951, and is marked here as Exhibit 19, is it not?

A. Yes, this is the check, but I have never received it.

Q. And it appears to have been cashed by whomever cashed it at the City Utilities with one H. Q. Heras, does it not?

A. That is not my signature, but what you said is okay.

Q. Do you know whether H. Q. Heras is a cousin of Diego Heras?

A. I don't remember who H. Q. Heras is. I know he has a cousin, but I don't know the initial of that other cousin.

Q. Did you authorize Diego Heras to sign your name to that check?

A. No, sir.

Q. Do you know when it was that you did the labor repairing the roof of the school?

A. I don't exactly remember the year it was, but I was helping Gabriel Garcia, who put the tar on the roof.

Q. Who else besides you and Gabriel Garcia?

A. Also a son of Mr. Garcia.

Q. Anyone else?

A. I believe there was another fellow, but I do not remember his name now.

Q. And which of the buildings was this that you all repaired the roof? Was it the high school, the elementary school, the band hall, the cafeteria, or all of them?

A. In the room Mr. Millgan used to be in the school.

Q. A while ago when I asked you about H. Q. Heras, did you have difficulty identifying the H. Q., the initials?

A. I don't know the initials of that other Heras.

Q. The H. Q. to whom I have reference is also known as Bete Heras. Do you know Bete Heras?

A. Bete? It probably is Beto, B-e-t-o,

Q. Do you know Beto Heras?

A. Yes.

Q. Is he any relation of your?

A. The father of Beto is my first cousin.

Q. Then Beto would be your second cousin?

A. I believe it will be a nephew in third degree.

Q. Then what, if any, relation is Beto Heras to Diego Heras?

A. Well, the father of Beto is a brohter of Diego's father, so they are first cousins.

Q. Now, do you know whether or not that is the same Beto or H. Q. Heras who worked at the City Utilities who is the first cousin of Diego Heras?

A. I don't know where he works.

Q. I do not mean at this time, but did that H. Q. Heras ever work at the City Utilities, that is Beto or H. Q.?

A. I have never known where he worked.

Mr. Foreman: That is all.

Mr. Bottler: (No further—wait just a minute.

4-781 REDIRECT EXAMINATION

Q. (By Mr. Bottler) You said you had worked in the room that Mr. Milligan used to be in?

A. In 1954, Mr. Milligan gave me two weeks as well as clearing the ground, hauling the grass, and when I

worked with Gabriel Garcia, it was in Mr. Milligan's school where Mr. Milligan was teaching.

Q. What work did you do there?

A. We were fixing the tar on the roof of the school.

Q. Did you do any other work at that time other than work on the roof of the school building?

A. No, sir, no other work, only two weeks.

Mr. Bottler: No further questions.

Mr. Foreman: Nothing further from us.

The Court: Very well.

4-781 REYNALDO ALONZO MALDANADO,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

4-781 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, please?

A. Reynaldo Maldanado.

Q. How do you spell that, please, for the reporter?

A. The whole? R-e-y-n-a-l-d-o A-l-o-n-z-o M-o—

Mr. Foreman: Your Honor. I can't hear anything he says.

The witness: I am sorry.

Mr. Foreman: It is Reynaldo, and the middle name Alonzo, and the last naame is—

The Witness: M-a-l-d-a-n-a-d-o.

Q. (By Mr. Bottler) Where do you live?
A. Benavides.
Q. How long have you lived in Benavides?
A. Eighteen years.
Q. And how old are you?
A. Eighteen.
Q. Have you ever done any work for the Benavides Independent School District?
A. No, sir.
Q. On March 20, 1950, check No. 27169 was issued to Reynaldo L. Maldonado for $584.45. Did you receive this check?
A. No, sir.
Q. Do you know any other Reynaldo Maldonados?
A. Not to my knowledge.
Q. Do you know a Reynaldo L. Maldonado in Benavides?
A. No, sir.
Q. Have you ever received any check from the Benavides Independent School District?
A. No, sir.

Mr. Bottler: No further questions.

4-783 CROSS EXAMINATION

Q. (By Mr. Foreman) When is your birthday, Reynaldo?
A. May 20, 1938.
Q. Then on March 20, 1950, you were approximately 11 years old?

A. That is right.

Q. And you weren't engaged in business for yourself at that time, were you?

A. I was in school.

Q. You were not concerned at that time with who was or who was not in business?

A. You bet I wasn't.

Q. Sir?

A. I surely wasn't.

Q. Not calculated to be familiar with the contractors for the school, or anything else in that area?

A. Yes.

Q. Mainly interested in reading and writing and arithmetic?

A. That is right.

Q. And maybe a girl?

A. Maybe.

Mr. Foreman: That is all.

Mr. Bottler: No further questions.

The Court: You may step down.

4-784 MRS. CONRADO G. CARRILLO,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

4-784 DIRECT EXAMINATION

Q. (By Mr. Bottler: What is your name?

A. Mrs. Conrado Carrillo.

The Court: I will ask you to speak out louder please. It is important everyone in the courtroom hear you. I want you to raise your voice and keep your voice sustained, and speak clearly.

Q. (By Mr. Bottler) Would you repeat that, please?

A. Mrs. Conrado Carrillo.

Q. Would you spell the name please, for the reporter?

A. C-o-n-ra-d-o C-a-r-r-i-l-l-o.

Q. What is your husband's name?

A. Conrado.

Q. And what does he do?

A. He is a teacher.

Q. Where does he teach?

A. The Benavides Independent School District.

Q. How long has he taught at the Benavides Independent School District?

A. Eleven years.

Q. Have you ever worked for the BISD?

A. No, sir.

Q. Check No. 29328, dated April 30, 1951 to Mrs. Conrad Carrillo for salary in the sum of $224.25 is shown by the annual reports of the school funds. Did you receive this check?

A. No, sir.

Q. All right. Check dated—

Mr. Foreman: How much was the amount of that, please?

Mr. Bottler: $224.25.

A check dated June 30, 1951, being No. 29615, was issued to Mrs. Conrad Carrillo for salary in the sum of $201.60, and I will ask you whether or not you received that check?

A. No, sir.

Q. Check dated 9-30-51, No. 29943, Benavides Independent School District, payable to Mrs. C. G. Carrillo, for salary in the sum of $179.70. Did you receive that check?

A. No, sir.

Q. Check No. 30509 dated 12-31-51 to Mrs. G. C. Carrillo for a salary of $179.70. Did you receive this check?

A. No, sir.

Mr. Foreman: What is it payable to?

Mr. Bottler: Mrs. G. C. Carrillo instead of C. G.

Mr. Foreman: Your Honor, I don't recall the record establishing that this woman is Mrs. G. C. Carrillo.

The Court: I don't think it does, however, her testimony is that she did not receive that check. Maybe she shouldn't have received it.

Mr. Foreman: We object to it as calculated to mislead the witness. Her name may be Mrs. G. C. May I establish whether her husband's name is G. C. or Conrado?

The Court: You may.

4-786 VOIR DIRE EXAMINATION

Q. (By Mr. Foreman) What is your husband's first name?

A. Conrado.

Q. Is there any G in his name?

A. His middle initial is G.

Q. Middle, but it is not—it is C. G., not G. C.?

A. Yes.

Mr. Foreman: Are the checks G. C.?

Mr. Bottler: Once check, the last one I read out, was Mrs. G. C.

Mr. Foreman: We object to that as this not being the person who would have, had there been such a check and the suggestion to the jury is that she was such person and therefore misleading and prejudicial and calculated to mislead and infer, we suggest, to the jury that she is some person other than who she is.

Mr. Bottler: Your Honor, I believe that the testimony is clear as to who this lady is. She is Mrs. Conrado G. Carrillo. I am asking her whether she received this check made payable to Mrs. G. C. Carrillo.

The Court: I will permit the testimony. Objection overruled.

Q. (By Mr. Bottler) I will refer you to check dated 2-29-52, No. 30735 made payable to Mrs. C. R. Carrillo for salary in the amount of $242.75, and ask you whether you received that check.

Mr. Foreman: We make the same objection there, Your Honor. It is not the same person. It is not she which would be the person to receive such a check.

The Court: Objection overruled.

Q. (By Mr. Bottler) Referring you to a check dated 4-30-52, No. 30989 payable to Mrs. C. G. Carrillo for salary—

Mr. Foreman: Give me the date of that, please.

Mr. Bottler: 4-30-52.

Mr. Foreman: I am sorry. I had another objection, but the April takes it out of the objection.

The Court: Very well.

Q. (By Mr. Bottler) —did you receive that check?

A. No, sir.

Q. I will refer you to a check dated 5-31-52, check No. 31128 payable to Mrs. C. G. Carrillo for salary in the amount of $219.75, and ask you whether you received that check?

A. No, sir.

Q. Referring you to a check dated 7-31-52, No. 31363, the Benavides Independent School District, payable to Mrs. C. G. Carrillo for a salary of $216.45, and ask you whether you received that check?

A. No, sir.

Q. I refer you to a check dated 10-31-52, No. 31720, Benavides Independent School District payable to Mrs. C. G. Carrillo for salary in the amount of $216.45 and ask you whether or not you received that check?

A. No, sir.

Q. Referring you to a check dated 8-31-52, No. 31496, Benavides Independent School District payable to Mrs. C. G. Carrillo for salary of $216.45, and ask you whether you received that check?

A. No, sir.

Q. Referring you to a check dated 9-31-52, being check No. 31608, Benavides Independent School District payable to Mrs. C. G. Carrillo for salary in the sum of $216.45, and ask you whether or not you received that check?

A. No, sir.

Q. I will refer you to a check dated 12-31-52, check No. 32049 of the Benavides Independent School District payable to Mrs. C. L. Carrillo for salary in the sum of $179.70, and ask you whether you received that check?

A. No, sir.

Q. I refer you to a check dated 11-30-52, No. 31889 payable to Mrs. C. L. Carrillo for salary of $179.70, and ask you whether you received that check?

A. No, sir.

Q. Referring you to a check dated 1-31-53, check No. 31280, Benavides Independent School District, payable to Mrs. C. L. Carrillo for salary of $179.70, and ask you whether you received that check?

A. No, sir.

Q. Referring you to a check dated 2-28-53, No. 32359, payable to Mrs. C. L. Carrillo, Benavides Independent School District, salary $179.70, and ask you whether you received that check?

A. No, sir.

I refer you to a check dated 3-31-53, No. 32516, Benavides Independent School District, payable to Mrs. C. L.

Carrillo for salary of $179.70. I ask you whether you received that check?

A. No, sir.

Q. I refer you to a check dated 4-30-53, No. 32668, payable to Mrs. C. L. Carrillo, Benavides Independent School District for salary in the sum of $179.70, and ask you whether you received that check?

A. No, sir.

Q. I refer you to a check dated 7-31-53, check No. 33058 payable to Mrs. C. L. Carrillo, BISD, for salary in the sum of $179.70 and ask you whether you received that check?

A. No, sir.

Q. Under what name does your husband receive his checks?

A. Conrado Carrillo.

Q. I will hand you check No. 33836, Benavides Independent School District, dated December 22, 1953, payable to Mrs. C. L. Carrillo—

Mr. Foreman: May it please the Court, as to this check and any other transactions after September of 1952, we interpose the objection that they are not admissible as to the 20th count for the reason that under our theory, the last overt act having been alleged as of September 29, 1952—what is the date of that check, please?

Mr. Bottler: December 22, 1953.

Mr. Foreman: —the conspiracy ended, and any evidence would necessarily have done so as a matter of law, and if there were any conspiracy at all in the first place, that is the date of the last overt act alleged in the first

count, and any and all testimony regarding matters occurring after September of 1952 would be inadmissible as to the conspiracy charged in the 20th count without—we ask that the objection as to this and as to any and all other alleged transactions occurring after September 29, 1952, as to the 20th count—

The Court: What says the Government?

Mr. Bottler: The Government says, Your Honor, that the objection is without—totally without merit; that the conspiracy, alleged overt acts, acts commencing and committed after that day—

The Court: What is the date you speak of, Mr. Foreman?

Mr. Foreman: September 29, 1952.

The Court: Very well. You may continue.

Mr. Foreman: May it be understood that goes without our renewing it as to any transaction after that date, Your Honor.

The Court: I haven't ruled yet. I want to hear the Government.

Mr. Bottler: The Government alleges as overt acts all of the acts set out and described in the first 19 counts of the indictment, which go through a period of time up in 1953, I believe, and also the conspiracy is not necessarily ended whenever an overt act is alleged.

The Court: I am not sure that I understand that cut-off date, September 29, 1952. Under the overt acts of Count 20, it re-alleges first each overt act alleged in the preceding 19 counts of this indictment and the respective dates and places therein. In the Overt Act 5, it alleges October 15, 1953; No. 6, September 30, 1952; No. 7, November 12, 1952; 8, January 13, 1953; 9, November 8, 1952; 10, November 15, 1952; 11, November 22, 1952; 12, October 17, 1952. I want to understand why you claim September 29, 1952 as the last—the date of the last overt act alleged.

Mr. Foreman: Because, Your Honor, of the peculiar wording of Count 20. It realleges each of the foregoing counts, but only alleges insofar as attempting to allege a conspiracy that, and this is in the next to the bottom line of Page 14 of the indictment, that these people conspired to commit the offenses against the laws of the United States which are fully described and set out in the first count of this indictment. It does not allege any conspiracy to commit any of the other alleged acts, but only the first count. It does reallege the others, but does not allege a conspiracy to commit them.

The Court: I think I understand the date now, and the objection is overruled.

Mr. Foreman: May it be understood, Your Honor, that we have the same objection as to any testimony with reference to any checks or transactions subsequent to September 29, 1952, insofar as it applies to the 20th count.

The Court: Very well, sir. You may have such a running objection.

Mr. Foreman: And as to any other on a motion to strike, it is overruled?

The Court: Yes, sir.

Q. (By Mr. Bottler) Turning your attention to the check No. 33836, Benavides Independent School District, dated December 22, 1953, payable to the order of Mrs. C. L. Carrillo for $179.70, I will ask you to inspect that check and tell you whether you ever received or cashed this check?

A. No, sir.

Mr. Bottler: All rgiht. The Government offers in evidence Government's Exhibit 109-A.

Mr. Foreman: We object to it as to each and all the defendants individually, and ask that the Government designate as to which it is offered and as to what counts it is offered.

Mr. Bottler: Your Honor, it is offered as to all defendants on all counts under which they are charged and triable.

The Court: It is so received. It will be so received as to all defendants on all counts in which they are charged and triable, and the objection is overruled.

Q. (By Mr. Bottler) Do you see the signature of Diego Heras on the face of this check?

A. No, sir.

Q. Whose signature do you see?

Mr. Foreman: Your Honor, I have no objection to testimony as to what names, but she is not qualified as to familiarity with the signatures or as a handwriting expert.

Mr. Bottler: Withdraw the question.

The Court: It has been withdrawn.

Q. (By Mr. Bottler) I will hand you what has been marked for identification as Government's Exhibit 28-A, 28-B, 28-C, 28-D- 28-E, 28-F, and 28-G, and ask you whether you can identify them?

The Court: I am going to suggest a recess at this time, and the witness may examine the checks during the recess. Court will recess for 20 minutes.

(Short recess.)

Mr. Bottler: May I proceed, Your Honor?

The Court: Yes, sir.

Q. (By Mr. Bottler) During the recess, did you examine Government's Exhibits 28-A through 28-G?

A. Yes, sir.

Q. And can you identify those checks?

A. Yes. They are my husband's salary.

Q. Your husband's salary checks?

A. Yes, and traveling expenses.

The Court: Will you speak louder, please.

A. They are my husband's salary and his traveling expenses.

The Court: Thank you.

Q. All right. Now, what did you do with those checks, if anything?

A. Well, some I cashed at the grocery store where I shop, and some I deposited in the bank.

Q. During the years 1952, 1951 and 1953 was your husband receiving checks from the Benavides Independent School District?

A. Yes, sir.

Q. Were they made out in this name, Conrado G. Carrillo?

A. In this name, Conrado Carrillo.

Mr. Bottler: The Government offers Government's Exhibits 28-A through 28-G.

Mr. Foreman, your honor, we see no purpose or any predicate laid by the indictment. We would like the Government to state for what particular purpose, as to what counts and as to what defendants, and as to all and each defendants we interpose objections that they are immaterial and irrelevant as to any count. That has been established by this witness as legitimate checks for salary and she cashed them and by the same token, the approximately forty or fifty thousand checks of the District might also be offered in the record.

Mr. Bottler: Your Honor—

The Court: I want to be sure I understand the testimony. The testimony is each of these checks were payable to her husband, and that they were each signed by the husband?

A. No, sir. They were signed by me.

The Court: Signed by you?

A. Yes, sir.

The Court: Each of them?

A. Yes, sir.

The Court: I will hear the Government.

Mr. Bottler: Your Honor, we offer them to show the persons who signed the legitimate checks and the handwriting thereon, the checks which were paid for legitimate purposes, and also to show that at the time that the checks shown on Government's Exhibit 10 were being issued to Mrs. Conrado Carrillo, her husband was receiving his regular legitimate salary checks.

Mr. Foreman: May it please the Court, again the Government assumes that this is the only C. Carrillo teaching in the Benavides School who might have conceivably have been the recipient of any of these checks addressed to Mrs. C. G. Carrillo, and for that reason we submit that this is extraneous evidence, that if he wanted to show this was endorsed, as distinguished from the signatures mentioned in his proffer, one check would established that as well as eight—

The Court: Seven.

Mr. Foreman: Seven. —and thereby the other six would unnecessarily unencumber the record and cause the in-

ference contained in the Government's proffer, without being supported by the record, that there was no other C. G. Carrillo employed—not proving anything at all or suggest any such proof.

The Court: I don't understand why they are offered. You explained it. I must have missed it. Will you explain it again, please?

Mr. Bottler: They are offered to show who was signing and countersigning the checks of the Benavides Independent School District on the dates in which these legitimate salary checks were issued and paid out to a teacher of the Benavides School. They are offered for the purpose of handwriting, of the names which appear on there, and it is necessary for us to have multiple samples.

The Court: You mean O. Saenz, O. Carrillo, Sr., and G. B. Parr?

Mr. Bottler: Yes, sir.

Mr. Foreman: May it please the Court, if I may be heard—

Mr. Bottler: I am not completely through.

Also the annual reports show that there were checks issued to Mrs. Conrad Carrillo, Mrs. C. G. Carrillo. We have heard her husband's name is Conrado G. Carrillo, and there was Mrs. C. L. and Mrs. C. R. Carrillo. We offer them to show Conrado Carrillo was being paid in his right name, that these were not mistakes. For all these reasons, the Government offers these.

Mr. Foreman: As to the handwriting feature, I did not express our objection for these has been nothing laid and until these checks have been authenticated they could not be used as handwriting comparisons.

The Court: There is no definite proof these checks were signed O. Saenz, O. Carrillo, Sr., and G. B. Parr, but there is proof the checks were received in the usual course of business by Conrado Carrillo as a teacher in the Benavides school, and they are admitted in evidence.

Q. (By Mr. Bottler) is there another Conrado Carrillo on Conrado G. Corrillo in Benavides?
A. Not that I know of.
Q. Is there another Mrs. Conrado Carrillo?
A. Not that I know of.

Mr. Bottler: Pass the witness.

4-800 CROSS EXAMINATION

Q. (By Mr. Foreman) Do you know a Mrs. C. G. Carrillo who is a teacher and has been a teacher and was a teacher at all time that these checks were being issued, to-wit, from 1950 to even up to this good hour named to-wit Mrs. Celia Guajardo Carrillo? Do you know whether there is such a teacher, a substitute teacher?
A. There is a substitute teacher, Celia Guajardo.
Q. Is Guajardo G-u-a-j-a-r-d-o?
A. I don't know.

Mr. Foreman: That is all. Wait, I will ask you one or two other questions. No, that is all.

Q. (By Mr. Bottler) By what name did you know this Celia Guajardo Carrillo prior to 1954?

A. Well, she is Celia Guajardo Carrillo or Celia Ramirez Carrillo.

Q. What do you call her?

A. I just call her Selia. I never call her by her second name because I know her first name.

Q. Was she known as Celia Ramirez?

A. Yes, she is known by that name.

Q. How did she receive her checks from the Benavides school?

A. I would not know, sir.

Q. Is she related to any of the defendants?

A. Yes, sir.

Q. All right. What is that relationship, and which defendant?

A. She is Mr. D. C. Chapa's daughter, Mr. O. P. Carrillo's sister, and Mr. Oscar Carrillo's sister.

Q. What is her husband's name?

A. Rodelio.

Mr. Foreman: I didn't catch it.

Q. (By Mr. Bottler) Would you spell it, please?

Q. R-e—I wouldn't know, sir.

The Court: Could we ask the interpreter to spell it phonetically? Is there any objection to that?

Mr. Foreman: No, Your Honor.

The Court: Very well.

The Interpreter: R-o-d-e-l-i-o.

Q. (By Mr. Bottler) Is that his first name or his last name?

A. That is his first name.

Q. And what is his last name?

A. Well, I know him as Rodelio Guajardo and Rodelio Ramirez.

Q. Do you know him as Rodelio Carrillo?

A. No, sir, I don't know him, any such person.

Q. Now, was Celia Ramirez married to Mr. Ramirez in 1950?

A. Yes.

Q. And she has been married to him ever since, is that right?

A. Yes, sir.

Q. Did you ever call her Celia Carrillo before 1954, and after she was married to Mr. Ramirez?

A. Everybody call her Celia Carrillo.

Q. When was this?

A. All the time that I know her.

Mr. Bottler: No further questions.

4-802 RECROSS EXAMINATION

Q. (By Mr. Foreman) Mrs. Carrillo, explain how Celia Carrillo might be called Celia Guajardo Carrillo, and the same Celia Carrillo called Celia Ramirez Carrillo or called Mrs. C. R. Carrillo or Mrs. C. G. Carrillo. First, what is is Rodelio's last name? Is it Ramirez or Guajardo?

A. I don't know, sir, because we sometimes call him Rodelio Ramiriz, and we call him Guajardo.

Q. Sometimes you call him Ramirez, sometimes you call him Guajardo, is that correct?

A. That is correct.

Q. Then, sometimes this lady, depending on who was thinking about her, would be known as Mrs. C. R. Carrillo, and other times known as Mrs. C. G. Carrillo, is that correct or not? Is that right or not? Would she or not be known according to the customs of the Spanish people both as Mrs. C. Ramirez Carrillo and Mrs. C. Guajardo Carrillo?

A. That is correct.

Mr. Foreman: That is all.

4-803 REDIRECT EXAMINATION

Q. (By Mr. Bottler) And how, according to the customs of the Spanish people, would she be known as Mrs. C. L. Carrillo, if she was?

A. I would not know, sir. That is the only three names I know her by, Celia Ramirez or Celia Guajardo, or Celia Carrillo.

Mr. Foreman: I ask that you speak louder.

A. I did not know her by L initial. I know her by Celia Guajardo, Celia Ramirez and Celia Carrillo. I did not know her by any other name.

Q. Is your husband related to any of the defendants?

A. Yes. Mr. D. C. Chapa. He is his first cousin.

Q. What relationship—strike that. No further questions.

Q. By Mr. Foreman) Had you told Mr. Bottler about Celia Guajardo Carrillo alias Celia Ramirez Carrillo before today?

Mr. Bottler: I object to the alias portion of that. If he wants to ask the question, I suggest he ask it factually.

Q. Isn't it true at the former trial of this case, in October, you testified—

The Court: What is the basis of the objection?

Mr. Bottler: Well, he is referring to her by one name alias some other name.

Mr. Foreman: I am sorry. I will rephrase the question.

The Court: Very well.

Q. (By Mr. Foreman) Isn't it true that you testified about the substitute teacher Mrs. Celia Guajardo Carrillo the last time this case was tried, in November of last year?

A. I testified that I did not know because she was not called to me as I named, just as an initial, C. G. Carrillo and C. R. Carrillo, and I did not know what the initials stand for.

Q. But you were asked if she was not Mrs. Celia Guajardo Carrillo, were you not?

A. I don't remember, sir.

Mr. Foreman: That is all.

4-805 MRS. ADOLFO BARRERA,

a witness called in behalf of the Government herein, having been first duly sworn, testified as follows, to-wit:

4-805 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, ma'am?

A. My name is Mrs. Adolfo Barrera.

Q. Keep your voice up while you are testifying.

A. I certainly will. My name is Mrs. Adolfo Barrera.

Q. How long have you been married to Mr. Barrera?

A. 15 years.

Q. What was your name prior to your marriage?

A. Amelia S. Canales.

Q. Where were you born?

A. I was born in Benavides, Texas.

Q. And what—how are you employed?

A. I am a schoolteacher.

Q. And what school do you teach in?

A. I teach in the Benavides Independent School District.

Q. How long have you worked for the Benavides Independent School District?

A. I have worked approximately 20 years.

Q. All right, now, in what school? Elementary, high school, in what school do you work?

A. I work in what we call the primary department, grades one through five.

Q. And how long have you worked in the primary department at Benavides?

A. Almost continuously except for one year when I taught reading in the intermediate grades in another department.

Q. Now, how did you receive your checks in the Benavides Independent School District?

A. My checks are made out to Mrs. Amelia C. Barrera.

Q. Were they ever made out to Amelia Canales, or Amelia S. Canales?

A. Not after my marriage.

Q. Were they made out that way prior to your marriage 15 years ago?

A. They were made out Amelia S. Canales?

Q. Yes.

A. Prior to my marriage, no, sir, except in the country schools. I did not teach in the Benavides city schools prior to my marriage.

Q. I see. Well, when did you start teaching in the city school at Benavides?

A. I think it was in the fall of '45, 1945.

Q. Then, since you started work in the city school at Benavides, how were you paid?

A. Mrs. Amelia C. Berrera.

Q. I refer you to page 11 of Government's Exhibit No. 10, and a check dated 7-31-51, No. 29731 payable to Amelia Canales for salary in the sum of $214.83, and I will ask you whether you received that check?

A. No, sir.

Q. I refer you to a check dated 8-31-51, No. 29839 payable to Amelia Canales for salary, for $214.83, and ask you whether you received that check?

A. No, sir.

Q. I refer you to a check dated 9-30-51, check No. 29942, Benavides Independent School District, payable to Amelia Canales for salary of $214 and ask you whether you received that check?

A. No, sir.

Mr. Foreman: How much is it, please?The last check?

Mr. Bottler: 29942.

Mr. Foreman: That is the number. What is the amount of it?

Mr. Bottler: $214.

I will refer you to a check dated 10-30-51, No. 30106, Benavides Independent School District, payable to Amelia Canales for salary in the sum of $214.83 and ask you whether you received that check?

A. No, sir.

Q. I refer you to a check dated 2-29-52, No. 30734, BISD, payable to Amelia Canales for salary in the sum of $226.30, and ask you whether you received that check?

A. No, sir.

Q. I refer you to a check dated 4-30-52, No. 30988 payable to Mrs. Amelia Canales for salary of $221.25, and ask you whether you received that check?

A. No, sir.

Q. I refer you to a check dated May 31, 1951, check No. 31127 payable to the order of Mrs. Amelia Canales for salary in the sum of $221.25, and I will ask you whether you received that check?

A. No, sir.

Q. I will refer you to a check dated 3-31-52 drawn on the Free Local Maintenance Fund for salary, check 16105, payable to Mrs. Amelia Canales in the sum of $221.25 and ask you whether you received that check?

A. No, sir.

Q. I will refer you to check dated 10-31-52, check No. 31721 drawn on the Benavides Independent School

District State & County Fund to Mrs. Amelia Canales for salary in the sum of $213.30, and ask you whether you received that check?

A. No, sir.

Q. I will draw your attention to a check dated 9-31-52, being check No. 31609 payable to Mrs. Amelia Canales for salary in the sum of $213.30, and ask you whether you received that check?

A. No, sir.

Q. I refer you to check dated 11-30-52, being check No. 31819, Benavides Independent School District Local Maintenance Fund, payable to Amelia Canales for salary in the sum of $214, and ask you whether you received that check?

A. No, sir.

Q. I will refer you to check dated 12—did you receive any other checks in the name of Amelia Canales from the Benavides Independent School District in the years 1952 through 7-31-53?

A. No, sir.

Q. I will ask you to look at Government's Exhibit 107, being check No. 33837 of the Benavides Independent School District dated December 22, 1953, in the sum of $214, payable to Amelia Canales. I will ask you whether or not you ever received this check?

A. No, sir.

Q. All right. Will you look at the endorsement which appears on the reverse side thereof and I will ask you whether that is your signature?

A. No, sir.

Q. Did you sign this check?

A. No, sir, I never saw it before.

Mr. Bottler: The Government offers into evidence Government's Exhibit 107.

Mr. Foreman: We object to it as to each of the defendants for the reason that there is no predicate laid for it. We object to it as to O. Saenz and O. Carrillo, Sr. for the reason that there has been no authentication of their signatures, and as to each of these defendants for the reason there has been no authentication as to the individuals separately. As neither one has been authenticated, and ask that—we already have the one as to its being after September 29, 1952, and as to each of the defendants we request that the Government stipulate for what purpose it is offered and as to the counts which the Government maintains it is applicable, and as to such counts as it is not determined to be applicable, and such defendants as it is not determined to be admissible we object to each and all counts and each and all defendants. I met myself coming back. In other words, we object as to each defendant as to each count.

Mr. Bottler: Since the defendant has asked the Government to state for what purpose and for what defendants it is offered, it is introduced for the purpose of showing the scheme and conspiracy to defraud as alleged in the indictment with respect to checks issued to persons who did not do the work. It is also offered on the conspiracy for the same purpose it is offered as against all defendants on all counts on which they are charged and on which they are triable.

The Court: It is so received, and will be received as evidence against all defendants to all counts for which they

are triable. Objection overruled. Government's Exhibit 107 is admitted in evidence.

Q. (By Mr. Bottler) Do you know a Celia Ramirez?
A. Celia Ramirez?
Q. Yes.
A. Yes, sir.
Q. How long have you known Celia Ramirez?
A. I have known her for a good many years.
Q. All right. Under what name have you known her?
A. I have known her as Mrs. Ramirez?
Q. And have you ever seen her in connection with your work at the Benavides Independent School District?
A. Yes, she is substituting in my room at present.
Q. Now, is she related to any of the defendants?
A. Yes, sir.
Q. What is the relationship?
A. She is Mr. D. C. Chapa's daughter.

The Court: Can everyone hear? I am going to ask that you keep your voice sustained.

A. Yes, sir.
Q. Has she subsituted in your room before?
A. No, sir.
Q. All right. Now, have you known her as a substitute teacher before this time?
A. Yes, sir.
Q. Under what name did she work as a substitute teacher?
A. I don't know how she draws her pay, but we all know her as Mrs. Ramirez.

Mr. Bottler: All right. No further questions.

Q. (By Mr. Foreman) Did you ever know her as Celia Carrillo?

A. Celia Carrillo, yes, sir, before her marriage, yes, sir.

Q. Is it your testimony she is still not referred to as Celia Carrillo?

A. Yes, sir people call her Celia Carrillo. I call her Mrs. Ramirez. We call her by both.

Q. You call her Mrs. Celia Guajardo Ramirez, and Celia Ramirez Carrillo both?

A. Yes.

Q. She is known by all of those names?

A. Yes, sir.

Q. Depending on who is doing the calling or the writing she might be Celia Carrillo, Mrs. C. R. Carrillo, Mrs. C. G. Carrillo, Celia Guajardo Carrillo, or Celia Ramirez Carrillo, might she not?

A. Yes, sir.

Q. Mrs. Barrera, with reference to these various checks, Exhibit 107, the only one actual check that was issued that was shown here, you were asked about numerous checks, I believe one on the end of each month commencing July 31, 1951, August 31, 1951, September 30, October 30, and then two months skipped, February 29, 1952, April 30, 1952, May 31, 1952, March 31, 1952, October 31, 1952, September 31, 1952, and November 30, 1952, without giving the amounts or the numbers, you never saw any such checks, did you?

A. No, sir.

Q. You don't know whether they were issued or not, do you?

A. I don't know whether they were issued or not.

Q. And of course, you do not know—don't know whether they were issued, where they were cashed, or who endorsed them?

A. I know nothing about them.

Q. Do you know Diego Heras?

A. Yes, sir, I know Diego Heras.

Q. Do you know whether or not he was working with and making out the checks of the Benavides Independent School District from July 1951 through November 30, 1952?

A. I don't know what Mr. Heras was doing at the time. I don't recall.

Q. You don't know whether or not every one of these checks, starting July '51 and ending November 1952, were made out and cashed by Diego Heras at Navejar's Beer Joint or by Navejar for Diego Heras in San Diego, do you?

A. I don't know anything about Mr. Heras.

Q. Did Diego Heras know you?

A. Yes, sir, he did.

Q. Did he know your maiden name?

A. Yes, sir, we were schoolmates.

Q. And did he know you had formerly taught under the name of Amelia Canales?

A. Yes, sir, he did.

Mr. Foreman: That is all, Your Honor.

4-815 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Under any custom of Spanish-speaking people, would Celia Ramirez be known as Mrs. C. L. Carrillo?

A. C. L. Carrillo? I don't think so.

Q. Under any custom or possible usage, could she be known as Mrs. Conrad Carrillo?

A. No, sir.

Mr. Bottler: No further questions.

4-815 RECROSS EXAMINATION

Q. (By Mr. Foreman) What was her husband's name?

A. Her husband's name is Rodelio Ramirez, but that is his mother's surname.

Mr. Foreman: That is all. Thank you.

The Court: You may step down. Are we through with this witness?

Mr. Bottler: Yes, Your Honor.

The Court: Very well. You may step down.

4-815 COSME LEAL,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified through the interpreter as follows, to-wit:

4-816 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?

A. Cosme Leal, L-e-a-l.

Q. You spell that C-o-s-m-e?

A. Yes.

Q. Leal?

A. Yes.

Q. Where do you live?

A. In Freer. I live in a ranch, but it belongs to Freer, Texas.

Q. Pardon me. "Lives in a ranch but it belongs in Freer, Texas"?

A. Yes. It is in the jurisdiction of Freer.

Q. How long have you lived on that ranch?

A. Three years.

Q. And where did you work prior to that time?

A. In several ranches.

Q. In what county?

A. In the same county.

Q. Is that Duval County?

A. Yes.

Q. Have you ever worked for the Benavides Independent School District?

A. No, sir.

Q. Are you an electrician?

A. No, sir.

Q. Have you ever done any electrical work?

A. Never.

Q. What kind of work do you do?

A. To build fences in the ranch, and just rough work in the ranch.

Q. All right. Turning to Page 2 of Government's Exhibit No. 10, I will ask you whether you received a check of the Benavides Independent School District No. 26420 dated November 9, 1949, payable to Cosme Leal on an electrical contract in the sum of $635.60. Did you receive that check?

A. No, sir.

Q. Do you know any other Cosme Leal in Duval County?

A. No, sir, I don't remember ever having known any man by that name.

Mr. Bottler: No further questions.

4-817 CROSS EXAMINATION

Q. (By Mr. Foreman) What formal education in school do you have, Mr. Leal?

A. I never went to school, sir.

Q. And have you lived in the western end of the county most of your life?

A. Well, I wouldn't say all my life, but most of my life.

Q. Have you, for the last 10 or 15 years of your life, lived in that western end of the county?

A. Yes, in the surrounding territory, yes.

Q. Around Freer?

A. Yes, I am on one ranch and on the next one.

Q. You are what?

A. When I am not on one ranch, I am on the next one.

Q. Your age, Mr. Leal, if you know?

A. I don't know much about my age because I don't have my birth certificate with me, but I presume I am about 50 years old.

Q. Would you know if you had your birth certificate?

A. Well, sir, I was born in Mexico but I became an American citizen, and that is how I happened to know I am more or less 50 years old.

Q. And Mr. Leal, can you read or write either the English or the Spanish language?

A. No, sir.

Q. And do you know who discovered you as a witness in this case, who first dug you up, or who first found you?

A. I didn't know the man that called on me.

Q. Do you know how many Cosme Leals there might be in Laredo or Corpus Christi?

A. No, sir, I don't know.

Q. You don't know whether there is between 75 and 100 persons named Cosme Leal engaged in the electrical business in both Corpus Christi and Laredo, do you?

A. No, sir, I don't know.

Q. How far have you ever been away from home until they brought you up here to Houston last November?

A. That is the farthest I have ever been.

Q. And up until the time you came last November, how far had you ever been?

A. That was the first time, and this is the next to the first.

Q. Had you ever been any further away from home than Alice, Texas?

A. The furthest I have ever been is Corpus Christi.

Q. And how far is that, if you know, in miles from Freer?

A. I don't know anything about distances, sir.

Q. Were you paid $8 for coming up here to say you were not Cosme Leal last November?

A. No, sir, I haven't been paid that money.

Q. I don't mean this time. I mean last November.

A. No, sir. You are wrong. I haven't received a penny.

Mr. Foreman: All right. That is all.

Mr. Bottler: No further questions.

The Court: You may step down.

4-820 INEZ DIMAS,

a witness called in behalf of the Government herein having been first duly sworn on oath, testified through the interpreter as follows, to-wit:

4-820 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name?

A. Inez Dimas.

Q. Where do you live?

A. Benavides.

Q. How long have you lived in Benavides?

A. About 30 years.

Q. Have you ever done any work for the BISD?

A. No, sir.

Q. Have you ever done any excavation work for the Benavides Independent School District?

A. No.

Q. Turning to Page 2 of the Exhibit 10, an excerpt on the annual school report, I will ask you whether you received check No. 26415 of the Benavides Independent School District—

A. No, sir.

Q. —dated November 5, 1949 for an excavation contract in the sum of $673.50?

A. No, sir.

Q. Do you know any other person named Inez Dimas?
A. No, sir.
Q. Is there anyone else by that name at Benavides?
A. No, sir. Not to my knowledge.

Mr. Bottler: No further questions.

4-821 CROSS EXAMINATION

Q. (By Mr. Foreman) Where do you live?
A. In Benavides.
Q. How long have you lived there?
A. Around 30 years.
Q. How old are you?
A. I believe 57.
Q. Do you know a man by the name of Joe Vaello?
A. I have seen him.
Q. Where?
A. In the bank in Benavides.
Q. Often or seldom?
A. I only see him once in a while.
Q. Do you have an account in his bank?
A. No, sir.
Q. Where else have you seen and known Joe Vaello besides his bank in Benavides?
A. Nowhere else.
Q. Does he know you?
A. Maybe. I don't know.
Q. You don't know whether he knows your name or not?
A. I'm not sure. I don't know.

Q. What do you do in Benavides now?

A. All the time I work in the ranches.

Q. And where are you presently employed?

A. I don't have a fixed place. Wherever they give me work.

Q. Did you ever work for Joe Vaello of the Vaello Lumber Company?

A. No.

Q. What education do you have, Mr. Dimas, that is formal education in school?

A. Not any. Not even a day.

Q. Not one day. Then, can you read or write either the English or the Spanish language?

A. I write very little Spanish.

Q. Mr. Dimas, what section of Duval County have you worked, if one section, mainly on ranches? Have you worked all over, or just in one section of the county?

A. Well, I have been a farmer. I have planted in some places.

Q. What section of the county, Mr. Dimas?

A. About three miles toward Laredo.

Q. That would be west of Benavides?

A. I don't know the direction.

Q. You don't know north from south, or east from west?

A. I am sorry. I never studied that.

Q. That is perfectly all right. Then I take it you have never held public office or served on the Benavides Independent School District Board of Trustees?

A. No, sir.

Q. Mr. Dimas, do you know whether or not there are 73 Inez Dimases in Duval County or not?

A. I don't know, sir.

Q. There could be, as far as you know, could there not, sir?

A. I do not know, sir.

Q. All right. That is all. Thank you, Mr. Dimas.

4-823 REDIRECT EXAMINATION

Q. (By Mr. Bottler) You stated you have never been a trustee of the Benavides Independent School District?

A. No, sir.

Q. You have never stolen any money from the School District, have you?

Mr. Foreman: May it please the Court, we object to that as immaterial, irrelevant, prejudicial, inflammatory, unsupported by any evidence in the case, argumentative, not responsive to any question asked by the defense on cross examination.

The Court: What says the Government?

Mr. Bottler: Well, Your Honor, he was bringing out whether this man was associated with the School Disrict Board.

The Court: I will sustain the objection, and I will instruct the jury not to consider the question.

Mr. Bottler: No further questions.

4-824 ALFONZO GONZALEZ,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified through the interpreter as follows, to-wit:

4-824 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, please?

A. Alfonzo Gonzalez.

Q. How long have you lived—where do you live?

A. Benavides.

Q. How long have you lived at Benavides?

A. Since 1937.

Q. Have you ever known any other Alfonzo Gonzales in Benavides?

A. No, sir.

Q. Have you ever done any painting work for the Benavides Independent School District?

A. No, sir.

Q. Do you know how to paint?

A. No, sir. I don't know anything about painting.

Q. Turning to Page 2 of Government's Exhibit 10, an excerpt from the annual school reports, I will ask you—

Mr. Foreman: May it please the Court, we object and except to counsel referring to papers he prepared, which has been stipulated and agreed here were his own, as the school report. All it is is notes, conclusions, the prosecuting attorney says he prepared and extracted, and I am sure he did, from Government's Exhibits 1 through 5. It is not a school report, and I am sure it is inadvertent, and we are

not accusing him of doing intentionally that which he is doing, but nevertheless it is harmful, and I object to him referring to Government's Exhibits 9 and 10 as school reports.

The Court: The jury is instructed Government's Exhibits 9 and 10 are not school reports. They are summaries of Government's 1, 2, 3, 4 and 5, and the jury is instructed that they should not consider either Government's Exhibits 9 or 10 as reports, and they should not be referred to as such.

Mr. Bottler: Your Honor, for the record I believe I referred to them as excerpts from them, but if I did not refer to them as excerpts or summaries, I will ask you whether or not you received check No. 26418 of the Benavides Independent School District payable to Alfonzo Gonzalez for a painting contract in the amount of $365?

A. I never received any check or anything, and I have never done any painting in my life.

Q. Have you ever done any other type of work for the School District?

A. Only one year. I did some work for the school digging some ditches.

Mr. Bottler: No further questions.

4-826 CROSS EXAMINATION

Q. (By Mr. Foreman) Do you know what year that was, Mr. Gonzalez?

A. I believe it was in 1942.

Q. And what is your normal occupation, sir?

A. I clean yards, yardwork most of the time.

Q. Do you have any formal education?

A. I went to school in Laredo probably ten years.

Q. How long have you lived in Benavides?

A. Since 1937.

Q. How old are you?

A. Fifty-six years old.

Q. How many people by the family name of Gonzalez are there in Laredo, Hebronville, and Duval County, if you know?

A. I know a Gonzalez family in Hebronville and also in Benavides, there are other Gonzalezes.

Q. Are there not Gonzalez in San Diego also?

A. I don't know.

Q. Then, do you know whether or not—how many there are in Webb County, or specifically Laredo?

A. No, sir, I don't know.

Q. You wouldn't know whether there were a half a dozen Alfonzo Gonzalezes painting in Laredo or not, would you?

A. No, sir, I do not know.

Mr. Foreman: I believe that is all, Mr. Gonzalez.

4-827 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Do you know any Alfonzo Gonzalez painting in the Benavides schools?

A. No, sir, I do not know.

Mr. Bottler: No further questions.

The Court: It is now five minutes to twelve. The Court will recess until 1:45.

(The following proceedings were held out of the presence and hearing of the jury.)

The Court: Be seated, please. I have a Western Union telegram from a man who I presume has been subpoenaed to testify in this case. It is addressed to me. It is from Laredo, Texas, and it reads:

"Can't be present as witness. Father had heart attack. Matter of life and death." Signed, "Ramiro Morin."

Is he a Government witness?

Mr. Wilkey: Yes, Your Honor.

The Court: Well, I wanted to bring this to the attention of all concerned out of the hearing of the jury. Does the Government have any suggestion?

Mr. Bottler: Well, we will try to ascertain what the condition of Mr. Morin's father is, and see about getting him up here as soon as possible.

The Court: Very well. People live for years with heart conditions. Some do. I wanted to bring that to your attention.

Mr. Wilkey: Thank you, Your Honor.

The Court: Will you bring the jury in, please?

(The following proceedings were had in the presence and hearing of the jury:)

The Court: The Government may call its next witness.

Mr. Bottler: Your Honor, the Government requests permission to recall Mrs. Barrera for one question.

The Court: Very well.

4-829 MRS. ADOLFO BARRERA,

a witness formerly called in behalf of the Government herein, was recalled, reminded she was still under oath, and testified as follows, to-wit:

4-829 DIRECT EXAMINATION

Q. (By Mr. Bottler) Mrs. Barrera, since you have been teaching at the Benavides schools, have you ever known any other teacher in the Benavides schools who was known by the name of Amelia Canales?

A. No, sir.

Mr. Bottler: That is all.

Mr. Foreman: No questions.

4-829 MRS. FLOYD L. RAY,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

4-829 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, ma'am?
A. Mrs. Floyd L. Ray.
Q. And where do you live?
A. At Benavides, Texas.
Q. What do you do?
A. I teach school.
Q. You teach in the public schools there?
A. Yes.
Q. When did you first start teaching for the Benavides Independent School District?
A. In 1925.

The Court: Mrs. Ray, I will ask that you speak up loud. It is important that everyone hear you, and I will ask you to speak loud and clear, please.

Q. (By Mr. Bottler) And have you taught school there in Benavides, continuously since that time, or were you off for a period?
A. I have been off for a period.
Q. Now, when did you leave the Benavides Independent School District?
A. In May, of 1951.
Q. All right. Now, did you stay in Benavides, or did you move some place else then?

A. I moved.

Q. Where did you move to?

A. I moved to Houston.

Q. Under what name were you paid by the School District prior to May of 1951?

A. Amelia A. Gonzalez.

The Court: I didn't understand.

A. Amelia A. Gonzalez.

Q. When did you marry Mr. Ray?

A. June—

Mr. Foreman: Is that Amelia A. Gonzalez?

A. Yes, sir.

Q. When did you marry Mr. Ray?

A. June 24, 1952.

Q. And where did you live after you married Mr. Ray?

A. We lived at Brownsville, Texas.

Q. All right. Now, how long did you live in Brownsville?

A. We lived there three years.

Q. When did you move back to Benavides?

A. In 1955.

Q. And how have you been employed since moving back to Benavides?

A. As Mrs. Floyd L. Ray.

Q. As. Mrs. Floyd L. Ray?

The Court: I am going to ask that you keep your voice sustained so everyone can hear you. Keep your voice up.

Q. (By Mr. Bottler) And doing what?

A. Teaching school.

Q. All right. Have you, since 1951, ever received any checks under the name Mrs. Amelia Gonzalez?

A. No, sir.

Q. All right. Did you receive a check dated 8-31-52, No. 31497 of the Benavides Independent School District payable to Mrs. Amelia Gonzalez for salary in the sum of $213.30?

A. No, sir.

Mr. Foreman: What is the date of that, please?

Mr. Bottler: That was 8-31-52.

Now, do you know Mrs. Adolfo Barrera?

A. Yes.

Q. What was her maiden name?

A. Miss Amelia Canales.

Q. How long has she been married?

A. I believe 14 or 15 years.

Q. And was she employed at the schools there before you left in 1951?

A. Yes, sir.

Q. Was she known as Mrs. Barrera, or as Amelia Canales then?

Mr. Foreman: We ask that he not lead the witness. We object to it as a leading question.

The Court: I don't think it is leading was she known by one name or by the other.

Mr. Foreman: She might have been known by either one, Your Honor.

The Court: Yes, you are correct. Sustain objection.

Q. (By Mr. Bottler) Under what name did you know Mrs. Barrera in the year 1951?

A. Mrs. Adolfo Barrera.

Q. When you were working at the school system, did you ever know another teacher other than Mrs. Barrera who had taught under the name of Amelia Canales?

A. No, sir.

Q. All right. Now, do you know Celia Ramirez?

A. Mrs. Celia—

Q. Mrs. Celia Ramirez?

A. Yes, sir.

Q. And by what name have you known her since 1951?

A. Mrs. Celia Ramirez.

The Court: We are still having difficulty hearing you.

A. Mrs. Celia Ramirez.

Q. Now, since 1950, have you ever heard her called Mrs. Celia Carrillo?

A. No, sir.

Q. Have you had any occasion that time to talk to her?

A. Not much.

Q. And what name would you call her when you would talk to her?

A. Mrs. Ramirez.

Q. Now, have you received any checks or cashed any checks of the Benavides Independent School District payable to Amelia Gonzalez since the year 1951 when you left?

A. Not after May of 1951, no, sir. Did you hear me?

The Court: It is rather difficult. Try to keep your voice a little higher.

A. Yes, sir.

Q. Do you know a Mrs. Amelia Gonzalez Gonzalez?

A. Yes.

Q. Did she ever teach at the Benavides school?

A. Not while I was teaching.

Q. Where does she live?

A. In San Diego.

Q. Do you know any other Amelia Gonzalez who taught at the Benavides schools?

A. No, sir.

Mr. Bottler: No further questions.

4-834 CROSS EXAMINATION

Q. (By Mr. Foreman) When Mr. Bottler asked you if this Mrs. Amelia Gonzalez Gonzalez ever taught at the Benavides school, you said not while I was teaching there. Is that your answer?

A. Not when I was teaching there.

Q. But you do know that from 1950 when you quit until 1954, that that same Mrs. Amelia Gonzalez did teach there, don't you?

A. Not after I quit teaching.

Q. Ma'am?

A. What was your question?

Q. Do you know whether or not Mrs. Amelia Gonzalez or Mrs. Amelia Gonzalez Gonzalez, to adopt the phraseology of the prosecuting attorney, was a teacher in the Benavides school from the time you quit in 1950? until shortly before you returned in 1955?

A. No, sir.

Q. What is your testimony?

A. She taught some time a while back, but not while I was teaching.

Q. Yes, that was my question. She taught after you left and before you returned, didn't she?

A. Not after I left, not that I know of.

Q. Of course, you wouldn't know about it except—but you do not know that she did not do so, do you?

A. Well, she taught before I left.

Q. And do you know whether she taught during your absence?

A. I don't know.

Q. Then you do not know whether she received check No. 31497 dated August 31, 1952, for $213.30, or not?

A. I don't know.

Q. Ma'am?

A. I don't know.

Q. As far as you know, she may have received it and may have rendered the services therefor made, might she not?

A. I do not know any of these questions.

Q. Who is the husband of Mrs. Amelia Gonzalez Gonzalez you have just testified about?

A. Mr. Cervantes Gonzalez.

Q. What does he do?

A. I think he works in San Diego for Piggly-Wiggly.

Q. Were they living in Benavides or San Diego when she was teaching in Benavides?

A. She lived in Benavides while she was teaching.

Q. Now, when did you call Mrs. Celia Ramirez Mrs. Celia Ramirez? Do you remember any time you have ever called her that?

A. When she is around the school, around the children.

Q. When she is around the children?

A. When we were around the children.

Q. Have you ever called her Carrillo?

A. No, sir.

Q. Ma'am?

A. No, sir.

Q. Do you know whether her name is Celia Guajardo Carrillo Ramirez?

A. No, sir.

Q. You do not know?

A. No, sir.

Q. What opportunity have you had, or when, or how often have you so addressed her as Mrs. Celia Ramirez, Mrs. Ray?

A. What was your question?

Q. I beg your pardon?

A. What was your question, sir?

Q. When did you ever adderss her as Mrs. Celia Ramirez?

A. I have stated, when we were around the school children.

Q. You have given us the occasion, but the question is the time. Do you recall ever having done so at any specific time?

A. I don't know any specific time.

Q. When did you ever address her as Mrs. Celia Ramirez? Celia Ramirez last before taking the witness stand, Mr. Bottler, the gentleman who just questions you. Did you talk with him during the noon recess or before you took the witness stand here?

A. Yes, sir.

Q. Where?

A. In his office.

Q. Ma'am? Where were you here in the building?

The Court: You will have to speak up louder.

Q. Did you answer?
A. Yes, sir.
Q. What did you say?
A. Yes, sir.
Q. You said yes, but as to where you had the conversation with prosecuting attorney Bottler here in the court house, was it here in the court house?
A. Yes, sir.
Q. And where in the court house was it?
A. In there.
Q. In where, please, ma'am?
A. In one of those offices.
Q. In his office?
A. Yes.
Q. I beg your pardon?
A. Yes.

Mr. Foreman: I can't hear her. I think that is all.

4-839 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Did I ever ask you to tell anything but the truth?
A. Just the truth.

Mr. Bottler: No further questions.

4-839 RECROSS EXAMINATION

Q. (By Mr. Foreman) Pardon me. I will ask you one more question, little lady, if you don't mind, before you leave. Did he ask you to say that this lady's name was Celia Ramirez?

A. No, sir.

Q. You mentioned the name Celia Ramirez?

A. I knew her name, and you asked me.

Q. Ma'am?

A. You asked if I knew Celia Ramirez, and I said yes.

Q. How did you and Mr. Bottler know to whom you were referring? Did he use the name Celia Ramirez first, or did you use it?

A. I knew her name was Celia Ramirez.

Q. You used it first. As between you and Mr. Bottler in Mr. Bottler's office, which of the two of you today at noon, or just befre you took the stand, which of the two of you first used the name Celia Ramirez? Do you recall?

A. I don't know.

Q. You don't recall. Thank you.

The Court: You may step down.

4-840 HUGH S. CLUCK,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

4-840 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?

A. Hugh S. Cluck.

Q. And where do you live?

A. Laredo, Texas.

Q. How long have you lived at Laredo?

A. About 45 years.

Q. Do you know Albert Martin?

A. Yes, sir.

Q. Have you ever done any work for Albert Martin, Trustee?

A. Yes, sir. I was his record keeper during the time he was trustee for the Servando-Benavides Estate.

Q. I hand you Government's Exhibit 29 and ask you if you can identify it?

A. Yes, sir. That is a payment of school tax in the Benavides Independent School District at Benavides, Texas.

Q. What was done with this check after it was made up?

A. It was mailed in with the tax notice to the tax collector at Benavides, Texas.

Q. What, if anything, was received after the check was mailed in to the Benavides Independent School District?

A. We received tax receipts.

Q. How did you receive them?

A. Through the mail.

Q. I hand you Government's Exhibits 38 and 39 and ask you if you can identify them?

A. Yes, sir. That is the total of those two tax receipt amounts, that check.

Q. All right. And were those tax receipts from the records of the Albert Martin, Trustee of the Benavides Estate?

A. Yes, sir.

Q. Were these the tax receipts that were received after you mailed this check?

A. Yes, sir.

Mr. Foreman: What is the check number, please?

Mr. Bottler: The check number is Government's Exhibit 29.

Are those kept as part of your records? Were they kept as part of the records of Albert Martin, Trustee?

A. Yes, they were kept in the files and returned with the bank statements.

Q. The check returned with the bank statement. Do you keep those records correctly?

A. Yes, sir.

Q. As part of the regular course of business, you keep tax receipts and canceled checks in the ad valorem taxes?

A. As evidence of expenditures?

Q. Were these exhibits kept as a regular course of that business?

A. Yes.

Mr. Bottler: The Government offers in evidence Government's Exhibits 29, 38 and 39.

Mr. Foreman: To Exhibit 29, being the check, our objection heretofore made as to any transaction after the 29th of September, 1952, would exclude this as to the only count in which we think it might otherwise be admissible, because there is a reference to it in the 20th count, in Paragraph 11, however, we interpose the further objection, one heretofore taken as a running bill, because the allegata and the probata do not coincide. It is alleged in Paragraph 11 check 715 was the check of Allen Martin, and this witness has otherwise identified the man as Albert Martin so that there is a discrepancy and a differentation and a disparity between the proof offered and the allegation by which the

Government undertakes to offer it, and we object to it being received as to Counts 1 to 19 for the reason that it is—that there is no allegation in any such counts to authorize the introduction of it. We object as to Count 20 for the reason stated, the disparity and after the last date alleged in the conspiracy and—does the Court want me to make my objection to the tax receipts, before or after each of them separately?

The Court: I think I would rather consider them separately. What does the Government say as to the objections to Government's Exhibit 29?

Mr. Bottler: Your Honor, the Government says that it is, of course, not required to set out all of the evidence which it intends to introduce in support of the various counts of the indictment charging mail fraud and conspiracy for mail fraud. The reference to the check as an overt act, sets out the check number, I believe, and the amount of the check, and refers to it as Allen Martin rather than Albert Martin, that is true. It is very hard to decipher, looking at the check, whether it is Allen or Albert and we submit the variance is such as not to cause it to be barred under the conspiracy count.

The Court: I understand that you are offering it as to the conspiracy count only?

Mr. Bottler: No, Your Honor, I am offering it also on the first 19 counts. It is alleged as part of the scheme to defraud that taxpayers checks would be deposited or cashed through banks other than the authorized depository bank.

as one other paragraph alleges. Of course, all of the checks are not enumerated. In fact, none of them are.

The Court: Objection overruled, and Government's Exhibit 29 is admitted in evidence.

Now, will you state your objections and exceptions to Exhibits 38 and 39, Mr. Foreman?

Mr. Foreman: We object to them for the fact that they come after September 29, 1952, and we object to them as to each of the defendants, except D. C. Chapa, for the reason that no other name appears on there—either the Government's Exhibit 39 or 38, and we object to them as to D. C. Chapa for the reason that his signature has not been authenticated nor has it been established by anyone that it is his signature, that it is therefore hearsay as to all of the defendants, and separately as to D. C. Chapa. We object to it being received as to any of the counts in the indictment, 1 through 19 inclusive, for the reason that there is no allegation to support it, and as to the 19th count for the reason that the allegation therein alleges—does not make the proper allegation to make it receivable on that count, if it would otherwise be received.

The Court: May I see the exhibits, please?

Objection overruled, and Government's Exhibits 38 and 39 are admitted in evidence.

Q. (By Mr. Bottler) Mr. Cluck, did you receive anything prior to writing out the check, Government's Exhibit 29?

A. Yes, sir, we received a notice of the taxes due.

Q. All right. I will ask you, do you ever pay ad valorem

taxes without first receiving a tax notice or tax statement from the taxing agency?

A. That is right.

Q. You do not, unless you first receive notice?

A. We either receive it or we request it.

Q. All right.

A. During the tax period.

Q. And did you receive a tax notice prior to writing up this check?

A. Yes, sir.

Q. All right. How did you receive that tax notice?

A. By mail.

Mr. Bottler: No further questions.

4-846 CROSS EXAMINATION

Q. (By Mr. Foreman) Do you recall having received it, or did you just testify from custom or practice, Mr. Cluck? Do you have an independent recollection of having received a tax notice on the—at any given date in the fall of 1952 on the Marie B. Volpe interest in the M. Arispe Grant or the Mesquite?

A. Yes, we received the tax notice. It was checked as to the property, if it was the proper rendition, and it was—the Benavides Independent School District for taxes of when it was checked, then the recommendation was made to Mr. Martin that the taxes be paid and take their discount.

Mr. Foreman: I object to all of that as not responsive except the yes, sir.

The Court: Objection sustained.

Q. (By Mr. Foreman) Mr. Cluck, please, sir, I know you are a layman—

A. Excuse me?

less of what your custom and practice was, I am now asking you about your independent recollection. Outside of any practice, or these receipts or anything else, as to whether or not you have a recollection, do you now at this moment recall the incident, the time, the occasion, the tax receipt itself—do you recall receiving it?

A. That is right.

Q. You do recall receiving it?

A. Yes.

Q. Now, when did you receive it, please, sir, that is, the one for the Marie B. Volpe interest in the south part of the M. Arispe Grant and the 795.60 acres of the P. Garza Block?

A. Those notices were received about the middle of September, sir.

Q. The middle of the month of September?

A. About the middle of September.

Q. What year did you receive it?

A. That was in 1952, I recollect.

Q. Did you go to the post office to get it?

A. No, sir, it was delivered to Mr. Martin's office or to his box.

Q. Did you get it out of the box?

A. No, sir, but I got it from his office.

Q. How was it transferred to you? How did it get to you from his office? Is your office at his office?

A. No, sir, but I go by and pick up the things necessary to be taken care of for the Benavides Estate. That was given to me to take care of.

Q. You yourself did not get it out of the post office, nor did you see the envelope in which it came?

A. It was in the envelope.

Q. It was? Was there more than one in that envelope, more than one tax notice?

A. Well, it was—it could have been two envelopes with each notice, but we combined the two when we paid them.

Q. The only thing I am asking you is to tell us your recollection as to the occasion or time that it came. Who handed it to you, Mr. Cluck?

A. Mr. Martin's office manager.

Q. What is his name?

A. Herrera.

Q. What Herrera?

A. C. M. Herrera.

Q. And where is he now?

A. He is in Laredo working for Mr. Martin.

Q. What is your connection with the—with Mr. Martin? You have offices at a different place. What is your own individual work?

A. I am the clerk of the District Court of Webb County. I was mayor of the City of Laredo at that time.

Q. You were?

A. Yes.

Q. And you were also record clerk of the Benavides Estate?

A. Yes, sir.

Q. Then, was your practice invariably to go to Mr. Martin's office and pick up these tax receipts?

A. That is right.

Q. And also to pick up the tax notices?

A. That is right.

Q. Do you recall whether the tax notices were in the office in an envelope, or whether they had been opened?

A. They had not been opened. They were from the Benavides Independent School District. We knew they were tax notices, therefore I took them and checked them, and recommended to Mr. Martin that they be paid.

Q. And you did not write the check?

A. Yes, sir, I wrote the check.

Q. You wrote the check for Mr. Martin?

A. Yes, sir.

Q. And after writing the check for Mr. Martin, what did you do with it? Did you leave it for Mr. Martin?

A. I had him sign it, and I mailed the check to the Benavides Independent School District.

Q. You yourself?

A. Yes, I did.

Q. Where did you mail them, please, sir?

A. From Mr. Martin's office.

Q. Did you take them to the postoffice?

A. I left them there to be mailed.

Q. Then you did not personally mail them? When you say you mailed them, you stamped them and left them there?

A. Yes.

Q. And you did not mail them, or do you know whether or not they were mailed? That was an assumption?

A. That is true.

Q. Did you or not make a practice to pay the taxes as early as possible in order to take advantage of the discount?

A. That is right.

Q. And did you not attempt to keep current on such payments?

A. Well, now, we get receipts in October, and they had just made a distribution to the heirs of the Benavides Estate, and until we received some revenue, we had to wait until October to pay those taxes.

Q. Now, did the Benavides Estate own land in other districts, school districts, besides the Benavides School District?

A. They do in Webb County, yes, sir.

Q. And in more than one independent school district in Webb County?

A. I think there are two in Webb County.

Q. Two independent school districts?

A. That is right.

Q. And those are the only three independent school districts—

A. They are not independent school districts. They are common school districts.

Q. Common school districts?

A. Yes.

Q. Are there two county common school districts in Webb County?

A. There are several. I don't know how many.

Q. Was it the custom and practice of mailing out tax statements, was it the same in all school districts, more or less the same, you receiving a statement—

A. In Webb County, they were included with your county tax notice or set out and defined as to what district you are going to pay those taxes.

Q. The county school—the county tax collector handled collections for the Webb County School District?

A. Yes.

Q. And instead of mailing them to the county tax collector, the procedure, that is the receiving of the tax statement, analyzing it, the preparing of the check and the mailing of the check was identical to the procedure in the Benavides Independent School District?

A. With the exception we pay the Webb County taxes in person. I take that to the tax collector in person.

Q. How long, Mr. Cluck, has the practice prevailed, to your knowledge, of tax statements being mailed, checks being mailed in and receipt being mailed back? Do you recall how far back in your memory that goes?

A. As far back as they have taxed oil and gas interests.

Q. Which would be, in your recollection, how long, Mr. Cluck?

A. I have been with Mr. Martin as record keeper since 1928 or 1929.

Q. And the practice then—

A. Paying the ad valorem tax was a matter of every year by the—that is, for Duval County and the school taxes for the Benavides Independent School District.

Q. Then the procedure in 1952 was the same, so far as the BISD was concerned, as it was back in 1928 and 1929?

A. That is right.

Mr. Foreman: That is all, Mr. Cluck.

Mr. Bottler: No further questions.

4-853 W. L. PRICE,

a witness called in behalf of the Government, herein, having been first duly sworn on oath, testified as follows, to-wit:

4-853 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?

A. W. L. Price.

Q. And where do you live?

A. Park Ridge, Illinois.

Q. By whom are you employed?

A. The Barbara Oil Company.

Q. And where is its office located?

A. 33 South Clark Street, Chicago, Illinois.

Q. Do you live in a subdivision of Chicago?

A. Yes.

Q. How are you employed at Barbara Oil Company?

A. Assistant treasurer.

Q. What was your position in 1952 with the Barbara Oil Company?

A. Pardon me?

Q. What was your position in 1952?

A. I was assistant treasurer.

Q. Who has supervision of the ad valorem tax records of the Barbara Oil Company?

A. I do.

Q. Who had that position in 1952?

A. I did, sir.

Q. All right. Do you keep the ad valorem tax records correctly?

A. Yes, sir.

Q. Do you keep them current as it comes in?

A. Current as it comes in.

Q. Is it part of the regular course of your business to keep tax receipts and canceled checks?

A. It is, sir.

Q. I will hand you Government's Exhibit 30 and ask you if you can identify it?

A. This is the Barbara Oil Company check payable to 1952.

Q. Who signed it?

A. It is signed by William F. Ziska, who is the vice president, and myself as assistant treasurer.

Q. Who had that check prepared?

A. I prepared this check myself.

Q. What, if anything, did you receive prior to making out that check?

A. We received an invoice from the Benavides Independent School District for the taxes.

Q. Did you ever pay your taxes without first receiving an invoice or tax statement from a taxing authority?

A. No, sir.

Q. What did you do with this check, Government's Exhibit 30, after it was prepared and signed?

A. After it was prepared and signed, I mailed this check, along with the invoice we received, back to the Benavides Independent School District.

Q. All right. I will hand you Government's Exhibit 36-A, and ask you whether you can identify it?

A. I can, sir. That is a distribution voucher at the time the check was written I prepared, making the proper charges.

Mr. Foreman: Is that Government's Exhibit 30-A?

Mr. Bottler: 36-A.

What, if anything, did you receive after you mailed your check to the Benavides Independent School District?

A. We later received a receipt for the taxes we had paid.

Q. I will hand you Government's Exhibit 36-B and ask you if you can identify this?

A. Yes, sir. That is a receipt we received for the taxes we had paid in the district.

Q. For what year?

A. For the year 1952.

Q. All right. Now, Government's Exhibits 30, 36-A and 36-B come from your ad valorem tax records, of the Barbara Oil Company?

A. Yes, sir.

Mr. Bottler: The Government offers in evidence Government's Exhibits 30, 36-A and 36-B.

Mr. Foreman: We object to this as to all defendants as to the first 19 counts for the reason there is no support for the introduction with reference to any of those counts, and we object to it as to all defendants with reference to the 20th count, and ask that it be limited to the particular defendant to whom it might be applicable at all, and ask the Government to stipulate as to which defendants it offers those respective exhibits, 30, 36-A and 36-B.

Mr. Bottler: The Government offers Government's Exhibit 30, 36-A and 36-B against all defendants and all counts upon which they are charged and triable.

Mr. Foreman: We will further object as to the dates of t ose, Your Honor.

The Court: Objection overruled. Government's Exhibit 30, 36-A and 36-B are admitted in evidence as to all defendants, as to all counts upon which they are triable.

Q. (By Mr. Bottler) All right. Was that check, Government's Exhibit 30, returned to you from the bank?

A. Yes, sir, it came back.

Q. Was it charged against your account?

A. It was charged against the Barbara Oil Company's account.

Mr. Bottler: No further questions.

4-857 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Price, how many employees are there in the offices at Barbara Oil Company at 33 South Clark Street in Chicago?

A. There are six.

Q. Who attends to the actual mailing of the mail?

A. As a rule I do the big part of it, where it is referred into my department.

Q. And do you have any independent recollection of having mailed this particular check, there marked as Government's Exhibit 30 or, when you say, "I mailed it," you assume it was mailed by someone in the office?

A. It was put in the mail.

Q. Do you recall having done so yourself?

A. I put it in the mailbox myself.

Q. Do you have an independent recollection of it?

A. I do.

Q. Did you make a note of it at the time?

A. No, I did not.

Q. How many such tax payments did you make during the fall of 1952, to what other taxing authorities, altogether?

A. As I understand it—may I ask a question, that I am correct?

Q. Yes, sir.

A. Do you mean just in Texas, or others?

Q. The whole United States.

A. Well, I couldn't answer, but I could give you approximately to the best of my knowledge.

Q. That is just as good. Perfect.

A. I would say at least 25 different taxing bodies.

Q. Do you have an independent recollection as to the mailing of each of those?

A. Where I prepared them, as I have prepared all of these checks, I mailed them because I insert them in the envelopes and mail them myself.

Q. Do you yourself carry them to the mailing chute?

A. Not all of these.

Q. When you say mail them, you mean put them in the envelope and put a stamp on it and leave it on the desk?

A. And it is put in a box to be carried to the mailing chute.

Q. It was put in a box to be mailed?

A. Yes.

Q. The mailing box on your desk?

A. Yes.

Q. Then the person who actually took it from there would have been whom, in October 1952?

A. Maybe one of the clerks might have mailed it, but at the time he took them, I couldn't answer that as to specifically—

Q. You don't know of your knowledge except from practice as to whether a clerk mailed it or whether you mailed it or who, if anybody, mailed it other than stamping it or putting it in the box?

A. Which one are you referring to?

Q. Government's Exhibit 30, the check for $361 dated October 23, 1952?

A. That one I do remember that I mailed.

Q. You took it to the chute?

A. The mail chute is right—

Q. How do you happen to remember this one, as distinguished frm the other 25 with the passage of the years, Mr. Price?

A. Because as a rule, when I prepare those tax checks, I try and mail them in the chute myself so I know they are gone, and it happens to be that depended on how many arrived at the same day.

Q. Then we will ask you how many were arrived at on October 1952? How many checks did you mail to other taxing agencies, in addition to the one here?

A. That is the only one I mailed out on that day to other taxing bodies.

Q. Do you have anything other than your recollection? Do you have a record so showing?

A. No, I do not.

Q. And how long was it after October 23, 1952, that

you were first called upon to recollect whether or not you actually mailed Government's Exhibit 30? How many weeks, months, or years was it before you were next asked as to whether or not you did or did not mail that check?

A. I believe in November of 1956, as I recall.

Q. Then, for four years, four years passed before it ever occurred to you that recalling whether you did something on a given day in October 1952 would become important, is that correct?

A. I beg your pardon.

Q. Four years and one month, or at least four full years had passed before you were called upon to recall something that had occurred on October 23, 1952?

A. I am assuming that is correct.

Q. Meanwhile, how many letters had you stamped and placed in the mail, Mr. Price?

A. I could not answer.

Q. Possibly thousands?

A. Possibly a great many. I wouldn't know for sure.

Q. It could have been up into the thousands?

A. I don't believe that many.

Q. Hundreds?

A. In the hundreds, possibly.

Q. Do you recall each of them, or just this particular one?

A. No, sir, as I explained, when it came to tax payments, I wanted to be sure, if I could, to mail those myself. To the best of my knowledge, that is what I tried to do.

Q. Again, are you testifying from your practice when you state you mailed this on October 23, 1952, and assuming that because that was your practice to mail this, or do

you have an independent recollection of having mailed this particular check?

A. I assume that is my practice. That is the way I testified.

Q. Then you do not have an independent recollection of mailing Government's Exhibit 30?

A. For that one particular item?

Q. Yes.

A. I wouldn't say that, but I would say from practice, I would say I did.

Q. One more question, Mr. Price. Was there any difference in the practice or manner by which you paid your taxes to the Benavides Independent School District than the way in which you paid them to all ther taxing agencies throughout the United States?

A. They were all paid by mail.

Q. All paid the same way? You receive a receipt and upon analyzing, checking, mailing the check back and—I mean, you receive a statement and check it to determine whether that is the correct tax, prepare a check, and mail the check back, and then receive a receipt in return, that is the way all taxing agencies with which you do business throughout the United States, that is the way you deal with all of them?

A. That is right.

Q. And the way you dealt with the Benavides Independent School District was the same as with any other?

A. Yes, sir.

Q. How old are you?

A. Forty-six in July.

Q. How long have you been handling the taxes for either the Barbara Oil Company or its antecedent, or any other?

A. Since 1949.

Q. And your practice has been the same throughout all your experience?

A: Yes, as far as my own is concerned.

Mr. Foreman: That is all.

4-863 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Is it important to you, Mr. Price, to see that those ad valorem tax checks are properly sent out?

A. Important?

Q. Yes.

A. Yes, we try to get them out as fast as possible.

Q. Have you ever used a messenger service to deliver your check to Texas?

A. No, sir.

4-863 RECROSS EXAMINATION

Q. (By Mr. Foreman) The mailing of them promptly is in order to obtain whatever discount is allowed, where such is allowed?

A. That is true.

Mr. Foreman: That is all.

The Court: You may step down.

4-864 O. W. GREENE,

a witness called in behalf of the Government herein, havbeen first duly sworn on oath, testified as follows, to-wit:

4-864 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?

A. O. W. Greene.

Q. And where do you live?

A. San Angelo, Texas.

Q. How long have you lived in San Angelo?

A. About 37 years—27 years.

Q. What business are you in?

A. Oil and royalties.

Q. All right. Who keeps the tax records of your properties?

A. I keep them myself.

Q. Do you keep your ad valorem tax records correctly?

A. Yes, sir.

Q. Do you keep them current?

A. Yes, sir.

Q. Is it part of the regular course of your business to keep your tax statements, tax receipts, and canceled checks?

A. Yes, sir.

Q. I will hand you Government's Exhibit 32, and ask you if you can identify this?

A. Yes, sir, that is my check.

Q. All right. Now, when was it made up?

A. April 23, 1952.

Q. It was made out in April?

A. Oh, September. Did I say April?

Q. Who prepared the check?

A. I did.

Q. And whose signature is it?

A. I did.

Q. And whose signature is it?

A. My own.

Q. What did you do with this check after it was prepared and signed?

A. I mailed it to the Benavides Independent School District, Benavides, Texas.

Q. I will hand you what has been marked Government's Exhibit 37-A, and ask you to look it over and see if you can identify it?

A. That is a statement of the taxes for the 1952 year.

Q. From whom?

A. From the Benavides Independent School District.

Q. Now, how did you receive this tax statement?

A. It came by mail.

Q. All right. Now, did you receive this tax statement before yu wrote out your check?

A. Yes, sir.

Q. All right. Now, I ask you to look at Government's Exhibit 37-B and ask you if you can identify that?

A. That is the tax receipt from the Benavides Independent School District for the year 1952.

Q. How did you receive it?

A. This came by mail after the check was forwarded. The number bears the same as the check number.

Mr. Foreman: I can't hear the witness. He is speaking so low.

The Court: Speak louder, please.

A. On all paid bills, I number—I write the number of the check on the bill as paid.

Q. All right, sir, and are Government's Exhibits 32, 37-A and 37-B from your advalorem tax records?

A. Yes, sir.

Q. And were those kept in the regular course of your business?

A. Yes, sir.

Q. And were those kept in the regular course of your business?

A. Yes, sir.

Mr. Bottler: We offer in evidence Government's Exhibits 32, 37-A and 37-B.

Mr. Foreman: We object to this exhibit, these exhibits, 32, 37-A and 37-B, as to all counts except the 20th count, Your Honor, and as to all defendants for the reason there is no allegation in any of the other counts to support. They are only mentioned in Paragraph 11 of Count 20.

Mr. Bottler: They are offered as to all defendants and as to all counts as charged and triable.

The Court: Objection overruled. Government's Exhibits 32, 37-A and 37-B are admitted in evidence as to all counts and to all defendants—all defendants and all counts upon which each of them is charged and triable.

Q. (By Mr. Bottler) Was that check, Government's Exhibit 30, returned to you?

A. Yes, it was returned to me through the bank channels.

Q. Was it charged against your account?

The Court: Do you mean 30 or 32?

Mr. Bottler: 32, I am sorry.

A. Yes.

Mr. Bottler: I have no further questions.

4-868 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Greene, you have royalty and oil interests in various school districts in different counties throughout the State of Texas?

A. Yes, sir.

Q. Do you also have such in other states than Texas?

A. No, sir.

Q. Could you estimate approximately in how many different school districts you pay tax on oil interests?

A. Four.

Q. Is there anything different in the manner and process or policy or practice with reference to the receiving of tax statements, the mailing of checks, the receiving of tax receipts for the Benavides Independent School District than any of the other three districts where you pay taxes?

A. They usually are handled by mail.

Q. And the process and practice is the same in all such districts, is it not, Mr. Greene?

A. Yes, sir.

Q. And you pay them as quickly as possible to obtain whatever discount is allowed by law?

A. Yes, sir.

Mr. Foreman: That is all. Thank you, Mr. Greene.

4-869 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Did you ever pay out a check in payment of ad valorem taxes without first receiving a tax statement?

A. No, I don't believe that I have.

Mr. Bottler: No further questions.

The Court: You may step down, sir.

4-869 JAMES E. BEALL,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

4-869 DIRECT EXAMINATION

Q. (By Mr. Bottler) Would you state your name, please, sir?

A. James E. Beall.

Q. Where do you live?

A. I live here in Houston.

Q. How long have you lived here in Houston?

A. Well, off and on since 1915.

Q. 1915. What is your business?

A. I am in the oil business.

Q. Are you an independent operator now, or are you working for someone else?

A. No, I am an independent operator.

Q. What did you do prior to becoming an independent oil operator?

A. I was in the leasing and scouting department of Gulf Oil Corporation?

A. Where are your offices?

A. Here in Houston, in the Gulf Building.

Q. Who kept your records of ad valorem taxes paid in the years 1952 and 1953?

A. I did. I kept them myself.

Q. All right. I will hand you what has been marked for identification as Government's Exhibit 33 and ask you if you can identify it?

A. Yes, that is a check that I wrote.

Q. All right. What did you do with this check after you wrote it?

A. I mailed it, with the tax notice, back to the Benavides Independent School District at Benavides.

Q. You mailed it in an envelope?

A. Yes, sir.

Q. What address did you put on it?

A. Just Benavides Independent School District, Benavides, Texas.

The Court: Mr. Beall, I am going to have to ask you to speak out a little louder. It is important everyone in the courtroom hear your testimony.

Q. All right, sir. Did you put a stamp on the envelope, or not?

A. I did.

Q. And where did you mail it?

A. I dropped it in the mail chute down in the Gulf Building.

Mr. Foreman: There in what building?

A. In the Gulf Building.

Q. Which part of the Gulf Building was it?

A. Well, I don't know. They have a chute, I think, on each set of elevators. It might have been in either one of them.

Q. Is that in Houston, Texas?

A. Yes.

Q. What, if anything, did you receive after you mailed this check?

A. Well, I got a canceled receipt, usually, back for it.

Q. All right. I will hand you Government's Exhibit 42 and ask you whether you can identify that?

A. Yes, sir, that is a receipt that I received with a notation, or one copy of it, which was sent back, and it was stamped and mailed back to me.

Q. All right, sir. Do you keep your ad valorem tax records correctly?

A. Yes.

Q. You keep them currently?

A. I keep them for income tax purposes.

Q. You keep them current?

A. Yes.

Q. It is a part of your regular course of business to keep your tax receipts and tax checks?

A. Yes, they are posted whenever I get them.

Q. How did you receive Government's Exhibit 42?

A. This?

Q. Yes.

A. In the mail.

Q. All right, sir. Did you ever pay your ad valorem taxes without first receiving a tax statement?

A. No, sir.

Q. I will hand you what has been marked for identification as Government's Exhibit 44, and ask you if you can identify that?

A. Yes, that is my check.

Q. And what did you do with this check after you prepared it?

A. It was mailed just like the previous one.

Q. All right. It was mailed in an envelope?

A. Addressed to the Benavides Independent School District, Benavides, Texas.

Q. All right. Did you put a stamp on it?

A. Yes, sir.

Q. And where did you mail it?

A. It was dropped in a mail chute in the Gulf Building.

Q. All right, and what, if anything, did you receive after you mailed your check?

A. Well, that would be a receipt from the School District indicating the payment, as paid.

Q. All right. I hand you Government's Exhibit 43. Can you identify it?

A. Yes, that is the receipt for that payment on that check.

Q. All right. Government's Exhibits 44 and 43, were they taken from your ad valorem tax records?

A. You mean—

Q. Were these part of your ad valorem tax records?

A. Oh, yes. Yes.

Q. Did these checks come back from your bank?

A. Yes, they came back through my bank statement, yes, sir.

Q. Were they charged against your account?

A. They were.

Q. Now, are there various portions of the—what is known as the Gulf Building-Bank of Commerce Building, and other section in what is commonly called the Gulf Building?

A. You mean my office?

Q. Yes.

A. Yes, of course.

Q. Just exactly in what part of the Gulf Building was it located?

A. I tell you, Mr. Bottler, they move those offices around up there pretty fast. I was in a half a dozen different offices. I was on the sixteenth floor for a while, then we were down on the seventh floor.

Q. In 1953?

A. In 1953, I believe we were on the sixteenth floor of the Gulf Building at that time. That is my best recollection.

Q. But you mailed those in a mail chute somewhere in the Gulf Building, or the associated building?

A. That is right.

Mr. Bottler: The Government offers into evidence Government's Exhibits 33, 42, 43 and 44.

Mr. Foreman: We ask that these be limited to Counts 15, 16 and 20 of the indictment since those are the only

counts in which any reference is made to Mr. Beall or his payment of taxes. We object to them as to all defendants as to all other counts for the reason that there is no predicate laid for their introduction. We would like a ruling on that before making a further objection.

The Court: Objection overruled.

Mr. Foreman: We—use of the mails, I should have said, as part of my objection, use of the mails is not named anywhere else but in those counts.

The other objections that we have are covered by the fact that the transaction as to Count 20, the fact that the transactions are dated after September 29, 1952.

The Court: Objection overruled, and Government's Exhibits 33, 42, 43 and 44 are admitted in evidence as to all defendants upon all counts for which each defendant is charged and is triable.

Q. (By Mr. Bottler) Did you ever send checks in payment of taxes without first receiving a tax statement?

A. No, sir.

Mr. Bottler: No further questions.

4-875 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Beall, the Government Exhibit 33 bears a rubber stamp "Benavides Independent School District, Taxation Department," and the signa-

ture, or rather the name of Ramiro Morin as a subsequent endorser, doesn't it?

A. Yes, sir.

Q. It appears to have been cashed at the Merchants Exchange Bank of Benavides, at least in one place. It shows Merchants Exchange Bank?

A. That is correct.

Q. And Government's Exhibit 44 bears only a facsimile or rubber stamp endorsement of Benavides Independent School District Taxation Department with the facsimile of signature D. C. Chapa, doesn't it?

A. Yes, sir.

Q. It doesn't bear any personal endorsement at all, does it?

A. No, sir.

Q. And it likewise appears to have the—I can't tell enough about the endorsements there. I can't tell enough to ask you about them.

Mr. Beall, how many people work in your offices, or did work in your offices in 1952—we will say 1952, first. We have got two checks in two different years.

A. You mean in the series of offices in which I was connected, or in my own individual office?

Q. I will only ask you with reference to the dates of these respective checks. One is Government's Exhibit 33 which appears to be dated October 24, 1952. In October of 1952, where were your books, your personal books, from which payment of this tax was made? Where were they kept?

A. In my desk in my office.

Q. Now, where was that office, somewhere in the Gulf Building?

A. Yes, sir.

Q. How many people worked in that office?

A. Just myself, in my office. I had a private secretary in an adjoining office.

Q. Did she have anything to do with handling your mail, or mailing your mail?

A. No, sir.

Q. You did your own mail?

A. She did company business, but I did my personal business myself.

Q. What was the company business?

A. Gulf Oil. I was with Gulf Oil Corporation in the Land Department.

Q. You owned this while you were still with the Gulf?

A. Yes.

Q. When did you leave the Gulf?

A. 1954.

Q. I see. Then that would account for your being the person who actually mailed these checks?

A. Yes.

Q. Did anyone else ever mail your personal mail for you?

A. No, sir.

Q. Do you have an independent recollection of mailing either one of these checks, Government's Exhibits 33 or 44, except your custom or practice with reference to doing that?

A. Other than it was my practice during the time, all my personal mail I handled myself and mailed myself, regardless of what it was.

Q. Did I interrupt you? Had you finished?

A. No. I said it was my practice to mail my own personal bills and things like that.

Q. It is from that practice, rather than from an independent recollection of either of these instances you have testified to having done so, isn't it?

A. That is true. I couldn't reiterate every step I took in mailing them. I just answered it as a general practice I knew I had.

Q. You own royalty interests in other school districts, either common school district or independent school districts than the Benavides?

A. Yes, sir.

Q. How many different such districts?

A. Probably half a dozen.

Q. And was or not your practice with reference to the payment of your school district taxes in all of these districts than the Benavides the same at it was with Benavides?

A. That is correct.

Q. You would receive the identical form of tax receipts, mail your check, and receive a receipt, the tax statement I should say?

A. Yes.

Q. And how long have you owned this royalty interest in Duval County, Mr. Beall?

A. Thirty-one years.

Q. And that would have been about 1926?

A. 1926, that is when I acquired it.

Q. Tell us whether or not your practice has been the same with reference to the receiving of the tax statements,

the mailing of the checks, and the receiving of tax receipts all those 21 years—

A. No, because it was not productive in those years, and I did not have any taxes, but since it came in production in 1946 and 1947, somewhere along in there, anyway from the first one, they were always handled the same way.

Q. And your reason for mailing your check of September 30, 1953, October 24, 1952 was in order to avail yourself of whatever discount—

A. Yes, sir.

Q. —the law allowed?

A. Yes, sir.

Mr. Foreman: That is all. Thank you, Mr. Beall.

4-880 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Mr. Beall, have you ever used a messenger service to send your tax checks down to the Benavides Independent School District?

A. No, sir.

Q. Have you ever received a tax statement or a tax receipt from the Benavides Independent School District by messenger?

A. No, sir.

Q. You always received them through the mail?

A. Always through the mail.

Mr. Bottler: That is all.

The Court: You may step down.

4-880 EDNA RICHTER,

a witness called on behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

4-880 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, ma'am?

A. Edna E. Richter.

Q. And by whom are you now employed?

A. I am secretary-treasurer of the Hagist Ranch, and vice president of the First National Bank in Mascoutah, Illinois.

Q. Where do you live?

A. Mascoutah, Illinois.

The Court: I didn't understand.

A. Mascoutah, Illinois.

Q. How do you spell that?

A. M-a-s-c-o-u-t-a-h.

The Court: Thank you.

A. You are welcome.

Q. (By Mr. Bottler) In the years 1953 who kept the records of ad valorem taxes of Hagist Ranch?

A. I did.

Q. Did you keep those records correctly?

A. Yes.

Q. Do you keep them current?

A. Yes.

Q. Was it part of the regular course of your business to keep tax receipts and canceled checks?

A. Yes.

Q. I will hand you what has been marked for identification as Government's Exhibit 50 and ask if you can identify it?

A. That is the check that was given to pay the taxes of the Benavides School District issued by Hagist Ranch.

Mr. Foreman: May it please the Court, we object to any testimony from this witness concerning any taxes of the Hagist Ranch or any that she paid, tax statements or tax receipts, for the reason that nowhere in the 20 counts of this indictment is there any allegation whatever, that is, not either in the first 19 counts nor anywhere in the 20th count, of any checks issued or taxes paid for property belonging to the Hagist Ranch and no allegation to support it. These defendants have had no notice of the expectation that the Government would offer such proof, and we object to it being received either in the form of testimony or as an exhibit.

The Court: What says the Government?

Mr. Bottler: The Government says, Your Honor, that this—necessarily, every other bit of evidence being offered by the Government is not detailed and set up in the indictment, and is not required under the law to be detailed and set up in the indictment. It is charged that taxpayers' checks would be deposited, cashed at other banks other than the authorized depository, and that is what this evidence goes to prove, that specific allegation of the counts of the indictment, set out in Count 1, and adopted by all other counts.

The Court: Objection overruled.

Q. (By Mr. Bottler) You say that you can identify Government's Exhibit 50?

A. Yes.

Q. Who prepared this check?

A. The check was prepared by the president, Mr. Louis J.Schon.

Q. Does his name appear thereon?

A. It appears thereon.

Q. And what is the name and place where it says secretary-treasurer?

A. That is Gus F. Fries.

Q. After this check was prepared, what was done with it?

A. It was handed to me, and I put it into the mail, mailed it to the Benavides School District.

The Court: Is anyone having any difficulty hearing? I will ask that you speak out a little louder and more clearly. It is important everyone in the courtroom hear you.

A. All right.

Q. Now, after you received this check for 14—strike that.

After you mailed out this check for $1479.18 to the Benavides Independent School District, what, if anything, did you receive?

A. A receipted tax bill.

Q. All right. I will hand you Government's Exhibits 51, 52, 53 and 54, and ask you if you can identify them?

A. Yes, those are the receipted tax bills received in payment of our check.

Q. Did you receive all of these receipts after you mailed this one check, Government's Exhibit 50?

A. Yes.

Q. And is this canceled check and these tax receipts, are they taken from your ad valorem tax records for the Hagist Ranch?

A. Yes.

Q. Did you mail out or pay any ad valorem taxes without first receiving a tax statement from the taxing agency?

A. No.

Mr. Bottler: The Government offers into evidence Government's Exhibits 50, 51, 52, 53 and 54.

Mr. Foreman: To which we object as generally as to each count as to each defendant, and stating they should be limited to the particular counts to which they apply, and the Government should be required to state as to which counts they offer this testimony. Our other objections, of course, are already in the record.

The Court: The objection is overruled, and Government's Exhibit 51, 52, 53 and 54, and 50, are admitted in evidence.

Mr. Bottler: No further questions.

4-885 CROSS EXAMINATION

Q. (By Mr. Foreman) How far is this town with the peculiar name, without pronouncing it, in Illinois, Mrs. Richter, from Houston?

A. Approximately a hundred miles, I would think.

Q. Up about the Red River somewhere?

A. No, it is the Mississippi.

Q. It is spelled M-a-s-c-o-u-t-a-h?

A. That is right.

Q. And do you have any other business down here except to come to testify in this trial?

A. No.

Q. You were subpoenaed?

A. Yes.

Mr. Foreman: There is only one check?

Mr. Bottler: That is correct.

Q. (By Mr. Foreman) This check that is in evidence as Government's Exhibit 50, for $1479.18, it bears the facsimile endorsement, does it not, tax collector, Benavides Independent School District, D. C. Chapa?

A. Yes, sir.

Q. That is not an actual signature? As a banker, you recognize that as a rubber stamp?

A. That is right.

Q. I believe you are vice president of that bank?

A. I am.

Q. Is it or not—has the Hagist Ranch any oil interests elsewhere than the Benavides Independent School District?

A. Yes.

Q. Where else in Texas, or in the United States?

A. McMullen County.

Q. Is that the only other oil interest?

A. That I know of.

Q. And is your practice and custom, with reference to the payment of taxes in the Benavides Independent School District, the same as it is with reference to the school district in McMullen County?

A. Yes.

Q. And your reason for sending the checks at the time

you did send them was to avail yourself of the discount, was it not?

A. Yes.

Mr. Foreman: I believe that is all. Thank you, ma'am.

Mr. Bottler: No further questions.

The Court: You may step down.

4-887 CHARLES T. DAVIS,

a witness called in behalf of the Government herein, having been first duly sworn on oath testified as follows, to-wit:

4-887 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?

A. Charles T. Davis.

Q. Where do you live?

A. San Antone.

Q. By whom are you employed?

A. Gilcrease Oil Company.

Q. How long have you been employed by the Gilcrease Oil Company?

A. Eleven years.

Q. What do you do for Gilcrease?

A. I am an accountant.

Q. Who has supervision and custody of the ad valorem tax records of the Gilcrease Oil Company?

A. I do.

Q. Who had them in 1953?

A. I did.

Q. Did you keep the ad valorem tax records correctly?

A. I did.

Q. Do you keep them current?

A. We do.

Q. Is it part of the regular course of your business to keep tax records, tax receipts and canceled checks showing ad valorem taxation?

A. We do.

Q. I will hand you what has been marked for identificaton as Government's Exhibit 55-A and ask you if you can identify it?

A. I can, yes. This is one of our checks.

Q. Who prepared that check?

A. I did.

Q. What did you do with it after it was prepared?

A. It was given to one of the officers for signature.

Q. Was it signed?

A. It was.

Q. What was done after it was signed?

A. It was given back to me, and I mailed it.

Q. Where was it sent?

A. To Benavides, Texas.

Q. I will show you Government's Exhibit 55-B and ask you if you can identify this exhibit?

A. Yes.

Q. What is it?

A. A tax receipt from the Benavides Independent School District.

Q. Was that received before or after you paid the check?

A. It wse received after the check was paid.

Q. All right, and that is for what year?

A. 1953.

Q. Is that the receipt showing the payment of the check Government's Exhibit 55-A?

A. Yes.

Q. Would you identify Government's Exhibit 55-C?

A. It is the tax statement from the Benavides Independent School District.

Q. For what year?

A. 1953.

Q. Do you ever pay your taxes without first receiving a tax statement?

A. We do not.

Q. How was this tax statement received?

A. It was received by mail.

Q. How was the tax receipt received?

A. By mail.

Mr. Bottler: The Government offers into evidence Government's Exhibits 55-A, 55-B and 55-C.

Mr. Foreman: We object to it and ask that all testimony with reference to it be stricken for the reason there is no allegation in any one of the 20 counts—of the 19 counts, or any allegation in any of the overt acts in the 20th count mentioning or laying a predicate for the introduction of either Government's Exhibits 55-A, B or C.

The Court: Objection overruled. Government's Exhibits 55-A, B and C are admitted in evidence.

Mr. Foreman: Our other objections are carried forward by a running bill.

The Court: Very well, sir.

Mr. Bottler: No further questions.

Q. (By Mr. Foreman) Mr. Davis, is your object in making this check in September to get the maximum discount allowed by law for prepayment of taxes?

A. You say, was that our object?

Q. Yes.

A. Well, we take the discount on all we can.

Q. It was to obtain the discount allowed by law?

A. It was to pay the statement also.

Q. Of course. You received the statement that you had until January to pay, and you paid it in September by mail to get the discount?

A. Yes, sir, if it was due at that period, for the discount.

Q. Well, if it wasn't due, there wouldn't have been a penalty until after December?

A. But the discount period was up in September, was it not?

Q. Yes, sir, and the date of your check is September 28th, is it not?

A. Well, I would have to see it again. (Document tendered to the witness.) Yes, sir.

Q. And any payment made in the month of September, you would be entitled to what per cent discount?

A. I can't remember that either.

Q. Three or four per cent?

A. Well, or one. They range all the way from one, two, and three.

Q. They go down in October?

A. Yes, but some county, or some common independent school districts allow one, two and three depending on the particular taxing agent.

Q. All right. Now, this Government's Exhibit 55-A, the check, appears to be endorsed with a facsimile, two facsimile stamps, and one facsimile printed signature, isn't that true?

A. It appears to be.

Q. There doesn't appear to be any written signature of anyone, does there, except for a rubber stamp?

A. That is correct?

Q. Sir?

A. That is correct.

Mr. Foreman: I think that is all, Your Honor.

Mr. Bottler: No question.

The Court: Very well.

Court will recess for 20 minutes, and the jury is excused now and I will ask that counsel remain briefly.

(The following proceedings were held out of the presence and hearing of the jury.)

The Court: Will the record show this is without the hearing of the jury.

Quite a number of witnesses have been interrogated about the discount allowable on prompt payment of taxes, and I am curious to know what that is, for my own information.

Mr. Foreman: You mean the amount allowed for the discount?

The Court: It has been my experience a discount is allowable only on state taxes. Did the Benavides Independent School District authorize a discount?

Mr. Foreman: It is done so.

The Court: That is not a constitutional discount?

Mr. Sharpe: It is statutory, I think.

The Court: I am asking for my own education. I don't think it is material.

Mr. Sharpe: It is done by school districts all over Texas, Your Honor. Some of them do not, however, but a great many of them do.

The Court: It is not done in the three school districts in which I pay taxes, so I was curious.

Mr. Sharpe: It does vary. For example, in Brownsville we start our discount period in October.

The Court: It is not a constitutional exemption?

Mr. Sharpe: I am not sure about that, but it is provided for in the law. I am sure it is at least statutory.

The Court: All right. The Court will recess for 20 minutes.

(Short recess.)

The Court: Be seated, please. The Government may call its next witness.

4-893 OTIS T. GRIFFIN,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

4-894 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?

A. Otis T. Griffin.

Q. Where do you live?

A. Dallas, Texas

Q. Are you connected with Texas Consolidated Oils?

A. Yes, sir.

Q. What office do you hold with them?

A. Well, my company manages Texas Consolidated Oils, and I am treasurer of all our companies. We have a management contract with them.

Q. Are the ad valorem tax records of the Texas Consolidated Oils kept under your control and supervision?

A. Yes, sir.

Q. Do you keep those ad valorem tax records correctly?

A. Yes, sir.

Q. Are they current?

A. Yes, sir.

Q. Is it part of your regular course of business to keep your canceled checks and tax receipts?

A. Yes, sir.

Q. I will hand you what has been marked for identification as Government's Exhibit 47, and ask you if you can identify it?

A. Yes, I can. That is a check of Consolidated Oils payable to the Benavides Independent School District, collector of taxes, for the year 1953.

Q. Did you receive that check back from the bank after it was canceled?

A. Yes, sir.

Q. Now, I will hand you Government's Exhibit 48, and ask you if you can identify it?

A. Yes, sir, it is a receipt for taxes paid for the year 1953 from the Benavides Independent School District.

Q. All right. I will also hand you Government's Exhibit 49, and ask you if you can identify that?

A. It is another receipt for taxes paid, ad valorem taxes, for the year 1953 from the office of the collector of taxes for the Benavides Independent School District.

Q. Do these two receipts cover the same payment or not?

A. They cover the same payment. We require duplicate receipts.

Q. Is this blue receipt, Government's Exhibit 49, is that a form you prepare, or is it prepared at the Benavides Independent School District?

Mr. Foreman: If it please the Court, he presumes it is prepared by one or the other. I think the proof will show it is not prepared by either, and therefore is leading and suggestive.

Mr. Bottler: Withdraw the question.

What is done with the form from the office of the collector of taxes, if you know, with respect to ad valorem tax payments?

A. We maintain a paid-tax file, and these doucments came from our paid-tax file. They are considered receipts by us.

Q. Who handles your rendition of taxes?

A. Carlton Meredith.

Mr. Foreman: Carlton who?

A. Carlton Meredith & Company, I believe.

Q. Did you receive these tax receipts, Government's Exhibit 48 and 49, before or after you paid the taxes with the check, Government's Exhibit 47?

A. They were received after we had paid the taxes.

Q. Were Government's Exhibits 47, 48 and 49 all taken from your ad valorem tax records for Texas Consolidated Oils?

A. You say, were they?

Q. Yes.

A. Yes, they were.

Mr. Bottler: The Government offers in evidence Government's Exhibits 47, 48 and 49.

Mr. Foreman: We object to, first separately, to Government's Exhibit 49 for the reason that it has not been authenticated as a record of the Independent School District. I would like permission to establish there isn't any record, if the Court will permit me to do so.

The Court: To ask questions relative to it?

Mr. Foreman: Yes, sir.

The Court: Very well, you may.

Mr. Bottler: We are not offering this as a record of the Benavides Independent School District. We are offering it as a record of the Texas Consolidated Oils.

Mr. Foreman: We object to that, may it please the Court, because it was identified as a tax receipt from the Benavides Independent School District. That is the way the witness testified to it. He asked what it was, and he asked if he received it in the mail after he paid the taxes. I would like to ask a few questions to ascertain what it is.

4-897 VOIR DIRE EXAMINATION

Q. (By Mr. Foreman) Who prepared this green sheet?

A. I don't know.

Q. Do you know whether it is a form of Carlton Meredith, the people you say handle the taxes for the various properties you manage?

A. I believe it is not. We prepare, in our usual course of business, receipts to be sent down. We ask that duplicate receipts be returned.

Q. By "we," do you mean Texas Consolidated Oils and Carlton Meredith, or do you mean Texas Consolidated Oils or do you mean Carlton Meredith?

A. I mean Texas Consolidated Oils.

Q. Mr. Griffin, did Texas Consolidated Oils prepare this green sheet, Government's Exhibit 49, or do you know?

A. Texas Consolidated Oils did not prepare it. I know that. I do not know who prepared it.

Q. Isn't it true either the Benavides Independent School District or anybody else Carlton Meredith handles for you, you get one of these forms with your taxes, the green form?

A. It could very well be, Mr. Foreman. I am not positive whether that is one of Carlton's forms or not.

Q. You do not mean for the record to infer or reflect that this is a receipt form of the Benavides Independent School District?

A. I believe what I said, what I intended to say, was we considered it an official receipt of the Benavides Independent School District. I do not mean to say they prepared it and sent it to us. We might have sent it to them.

Q. If it was sent to the Benavides Independent School District, it was sent by Carlton Meredith at his own instigation and own preparation?

A. If it was sent by our office, it would have been prepared by Carlton, along with the check, and asked the proper official for a receipt in duplicate for taxes paid.

Q. Is it your testimony you do not know who prepared it, who sent it, or when it was sent?

A. No, sir, that is not my testimony. My testimony is I do not know who prepared that receipt. I do know we considered it a receipt.

Q. In other words, it is a record of your company in connection with the Benavides taxes, whatever it is?

A. Of my company, yes.

Mr. Foreman: Now, as to this Government's Exhibit 49, Your Honor, we object to it as not being properly authenticated, or not showing or having been connected with the Benavides Independent School District, and of such nature as to permit its being received in evidence here, and we further object with reference to this Government's Exhibit 49 that there is no allegation in any count of the indictment with reference to the Texas Consolidated Oil Company taxes so as to put us on notice of any intent to establish or introduce records of that company.

Mr. Bottler: Your Honor, we would like to ask two more questions of the witness.

The Court: Very well, sir.

4-900 DIRECT EXAMINATION (Continued)

Q. (By Mr. Bottler) Referring to Government's Exhibits 48, 49 and 47, I will ask you whether it was part of the regular course of your business to keep those canceled checks and tax receipts as part of the ad valorem tax records of Texas Consolidated Oils?

Mr. Foreman: Just a minute. Before answering the question, we want to object that this is duplicitas. It might have been in part, to keep one and not the other.

Mr. Bottler: I will ask the questions separately.

The Court: I think it should be done.

Q. (By Mr. Bottler) Referring to canceled checks, and

Government's Exhibit 47, I will ask you was this check kept in the regular course of business of Texas Consolidated Oils in your ad valorem tax records?

A. Yes, sir.

Q. And did you keep canceled checks as part of your regular course of business and as part of your ad valorem tax records?

A. Yes, sir.

Q. With reference to Government's Exhibit 48, I will ask you first, is it part of the regular course of your business to keep as records of the Texas Consolidated Oils tax receipts from the taxing agency?

A. Yes, sir, we do.

Q. All right. I will ask you whether or not Government's Exhibit 48 was kept in your ad valorem tax records as part of the regular course of your business?

A. It was in our ad valorem tax records, yes.

Q. I will ask you with reference to Exhibit 49?

A. I am not sure. Are those the two purported receipts?

Q. 49?

A. Those two instruments were in our ad valorem tax record files.

Q. Were they kept there as part of the regular course of your business?

A. Yes, sir.

Mr. Bottler: Your Honor, the Government submits that Exhibits 47, 48 and 49 are admissible as records kept in the regular course of business, the testimony with respect to the preparation of the check, and also to the tax receipt. The defendants have had notice of these instruments.

Mr. Foreman: So far, Your Honor, I have only interposed—

The Court: I have heard your objection to 49. I would like to hear your objection to 47 and 48, if any.

Mr. Foreman: In addition to the running objection as to Count 20 that they were more than a year past the date that under our theory and the law, as we conceive it, the conspiracy, if any ever existed, would have been by law terminated. We object to Exhibits 47 and 48 as to each count, and as to each defendant as to each count, and ask that they be limited to the particular defendant or as to the particular count to which the Government contends they are admissible. The only name on Exhibit 47 appears to be D. C. Chapa, a facsimile signature, and the purported signature on 48 not having been authenticated as being the signature of D. C. Chapa, and we say to the Court that we do not believe it will be possible so to authenticate, so as even to him we object to it as to all counts of the indictment. In other words, we object to them being admitted generally for all purposes.

The Court: May I see the exhibits, please?

Mr. Foreman: I would like for the Court to state into the record whether or not the Court agrees that the endorsement is a facsimile signature.

The Court: I can't tell. It appears to be. I can't say conclusively. If it is a matter of dispute, I think the writing on the checks will have to be tried by the jury.

Mr. Foreman: I wonder if I could establish it for the record at this time by the witness, Your Honor.

The Court: Very well. Let me take a look at it first.

Mr. Wilkey: Your Honor, let us state that the Government is not contending that all the purported signatures, D. C. Chapa or otherwise, were made by a person or made by a facsimile. Some were facsimile, obviously, and some were signatures. The evidence as to which will be offered as a later part of the Government's case, and I, from memory, not saying this day, do not contend which this is, but that will be part of the Government's case at a later time.

The Court: I have seen Government's Exhibits 47 and 48, but not 49. May I see Government's Exhibit 49?

(Document tendered to the Court.)

The objection is overruled and Government's Exhibits 47, 48 and 49 are admitted in evidence.

Mr. Foreman: May I have the record show if the prosecuting attorney will stipulate that the signature to Government's Exhibit 47 is a facsimile signature?

Mr. Bottler: Very well.

The Court: It is so stipulated.

4-904 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Griffin, this check dated the 28th of September, 1953 for $1421.66 is marked Government's Exhibit 47, isn't it?

A. Yes, sir.

Q. And it is drawn on Texas Consolidated Oils general fund, isn't it?

A. That is correct, yes, sir.

Q. And it is endorsed by stamps, tax collector, Benavides Independent School District, and the Government stipulates a facsimile signature of D. C. Chapa?

A. Yes.

Q. And it appears to have been cashed on October 5 at the San Diego State Bank?

A. That is correct, sir.

Q. And on October 6 at the Alamo National Bank of San Antonio, Texas?

A. I believe this imprint here will give you the paid date, 10-7-53. It passed through that bank in transit getting back to Dallas to be cleared through the Republic Bank. These prints or perforations will show that.

Q. Will you tell us whether or not Texas Consolidated Oil Company is a solvent company or not?

A. Is a solvent company?

Q. Yes, sir.

A. No, sir, it is not.

Q. And tell us whether or not it was a solvent company in 1953?

A. Well, that is a question that would be rather difficult to answer. The company is not in bankruptcy. The company belongs to the United States Government through the Reconstruction Finance Corporation. I don't believe I would be in a position to say as to the solvency, but it isn't a healthy financial company.

Q. It was having financial difficulties in 1953, even as it is now?

A. It isn't having any particularly now. It had extreme financial difficulties in '49 and '50, would be the correct way to put that.

Q. Would you tell us how many checks of Texas Consolidated Oil Company bounced in 1949 and 1950?

A. I was not associated with it at that time. We became manager in April of 1952. I would not be able to tell you at that time.

Q. You do not know whether Texas Consolidated Oil Company, prior to 1952, was among the lists required to be cashed before the funds were deposited in the depository bank because of Texas Consolidated Oil Company's check having theretofore come back after being deposited?

A. I know nothing about it prior to April 1952 at all.

Q. Do you know of any Texas Consolidated Oil Company checks from the year 1948 that were not all cashed at some other bank besides the depository bank before the funds deposited in the depository bank?

A. I believe you will have to restate that, Mr. Foreman. I didn't follow you closely enough.

Q. Do you know from the records available or otherwise, whether or not, insofar as the Benavides Independent School District is concerned, from September 1948, whether or not all Texas Consolidated checks were cashed before—at some other bank, either the Merchants Exchange Bank of Benavides, the San Diego State Bank of San Diego, or elsewhere before tax statements were issued?

A. No, sir, I don't know.

Q. All right. Now, just to—I believe that is all.

Q. (By Mr. Bottler) This check, Government's Exhibit 47, shown to you by Mr. Foreman, showed it was cashed at the San Diego State Bank?

A. Yes, the bank stamp indicates that.

Q. Do you know whether or not the proceeds of this check were applied on a note of Mr. D. C. Chapa at that bank?

A. No, sir.

Mr. Foreman: May it please the Court, that is highly improper, asking for something out of the realm of this witness' knowledge, inflammatory, and calculated for that purpose, and we ask the jury be—I believe we will ask that that—may we approach the Bench with the stenographer for a motion?

The Court: Very well.

(The following proceedings were held at the Bench out of the presence and hearing of the jury.)

The Court: Show that this is out of the hearing of the jury.

Mr. Foreman: The Defendant D. C. Chapa moves for a mistrial, Your Honor, because of the prejudicial and inflammatory conduct of the Prosecuting Attorney Ed Bottler, and suggesting and implying to the jury that which could not be borne—could not be within the knowledge of this witness, and suggesting the Government's theory of the case at this time unsupported by

any evidence or inference, and on the prior trial of this case, he interrogated this witness at length and did not ask him that question, and knew he could not have that knowledge, and the error and harm and injury to the said Defendant D. C. Chapa is of such nature as not to be calculated to be cured by an instruction of the Court not to consider the remarks of the Prosecuting Attorney Bottler.

Mr. Bottler: Your Honor, Defense Counsel Foreman went into great length with this witness about the cashing of this check, whether he knew it was cashed at a bank other than the depository because of an alleged list of checks—

The Court: I think I've heard enough. The motion is for mistrial. Well, the motion for mistrial is overruled. It is overruled. I will instruct the jury since there was a negative answer, they should give it no effect.

(The following proceedings were had in the presence and hearing of the jury.)

The Court: The jury is instructed that the preceding question asked of this witness received a negative answer. The jury is instructed not to consider the question for any purpose.

Mr. Bottler: No further questions.

Mr. Foreman: Nothing further from us, Your Honor.

The Court: Very well. You may step down, Mr. Griffin.

4-909 A. W. MOORE,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

4-909 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?
A. A. W. Moore.
Q. And by whom are you employed?
A. Sid Katz.
The Court: I didn't understand.
A. Sid Katz.
Q. Who is Meyer Katz?
A. That is Mr. Sid Katz brother.
Q. What is Sid and Meyer Katz?
A. That is a joint-venture partnership.
Q. What position do you hold with Sid Katz?
A. Comptroller.
Q. Do you do any work for Sid and Meyer Katz, the joint venture?
A. Yes.
Q. How long have you been comptroller for these enterprises?
A. Twenty-six years and two months.
Q. Who has supervision and control of them, of the ad valorem tax records of Sid and Meyer Katz?
A. I do.
Q. Do you keep those records correctly?
A. Yes, sir.
Q. Do you keep them currently?
A. Yes, sir.

Q. Is it a part of the regular course of your business to keep the canceled checks and tax receipts of the—that you have pertaining to ad valorem taxes.

A. Yes, sir.

Q. Where do you live, sir?

A. San Antone.

Q. I will hand you what has been marked Government's Exhibit 56-A, and ask you whether you can identify that check?

A. Yes, sir, I can, Charles J. Katz, signature.

Q. And what was done with that check after it was prepared?

A. It was sent through the mail to the Benavides Independent School District tax collector.

Q. Did you ever send out checks in payment of ad valorem taxes without first receiving a tax statement?

A. No, sir.

Q. Will you look at Government's Exhibit 56-B and tell us whether you can identify it?

A. Yes, I can.

Q. What is it, please, sir?

A. This is a tax receipt in payment of the taxes according to this check.

Q. All right. Now, what years—what year was covered by that tax receipt?

A. 1953.

Q. And what year was this check given in payment of?

A. September 24, 1953.

Q. Did you receive these—how did you receive the tax receipt?

A. In the mail.

Q. All right, sir, and was it received before or after you sent the check 56-A?

A. The statement came in before, and then we sent the check.

Q. When was the receipt received, the tax receipt received?

A. Shortly afterwards. I don't know, the exact date.

Mr. Foreman: May it please the Court, we object to all the testimony of this witness, and ask that it thus far be stricken for the reason no allegation in any count in the indictment or any alleged overt act in Count 20 authorizes the introduction of this testimony, and in any event, the testimony should be limited to the 20th count of the indictment and not admitted generally as to the other 19 counts. That is our objection.

The Court: Objection overruled.

Q. I will show you Government's Exhibit 56-C and ask if you can identify it?

A. Yes, sir.

Q. What is it, sir?

A. It is another receipt form that we sent out with our checks which we require an officer receipt, and this receipt also. We sent that out to all of our ad valorem taxes.

Q. And who prepares your tax renditions?

A. Carlton Meredith of Dallas.

Q. All right, sir. Now, was Government's Exhibit 56-A kept in your advalorem tax records in the regular course of your business?

A. Yes, sir.

Q. Was 56-B and 56-C likewise kept?

A. Yes, sir.

Mr. Bottler: The Government offers into evidence Government's Exhibit 56-A, B and C.

Mr. Foreman: May I ask a few questions about Mr. Meredith's connection?

The Court: You may, sir.

4-913 VOIR DIRE EXAMINATION

Q. (By Mr. Foreman) Mr. Moore, are your tax records kept in Mr. Meredith's office in Dallas?

A. May I ask what kind of records you mean? You mean the receipts, or what?

Q. Yes, sir.

A. No, the receipts are kept in our office.

Q. What receipts are kept in Mr. Meredith's office?

A. A copy of the assessment which he makes out for us.

Q. Do you know whether or not Mr. Meredith prepared this green sheet?

A. Yes, sir, I do.

Q. Do you know whether or not it is one of his forms?

A. Yes, sir.

Mr. Foreman: That was all the questions I wanted, Your Honor.

I would like to make an objection that we have heretofore made with reference to the testimony, renew it as to the exhibits themselves, 56-A, B and C. We already have our running bill with reference to the dates insofar as Paragraph 20—Count 20 is concerned.

The Court: Have the exhibits been offered, 56-A, B and C?

Mr. Bottler: Yes, I believe so. If not, we are offering them now.

The Court: Very well. Objection overruled, and Government's Exhibits 56-A, B and C are admitted in evidence.

Mr. Bottler: No further questions.

4-914 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Moore, with reference to Government's Exhibit 56-A, the check, state whether or not, for the record of course, it appears to be endorsed with a stamp "Tax Collector, Benavides Independent School District," and either the same or another stamp, D. C. Chapa?

A. Yes, sir.

Q. This is not an actual signature? It is a facsimile signature, isn't it Mr. Moore?

A. Yes, sir.

Q. Then there is no personal signature whatever of any individual except by rubber stamp on Government's Exhibit 56-A?

A. You mean endorsement?

Q. Yes.

A. That is all.

Q. And the check appears to have been cashed at the San Diego State Bank October 5, 1953?

A. That is right.

Q. Who is Charles J. Katz?

A. Mr. Sid Katz son.

Q. Mr. Moore,, did you yourself prepare this check?

A. Yes, sir.

Q. And what—you mean by that, you typed it out?

A. No, I had the stenographer type it out.

Q. What exactly did you have to do with it, please, sir?

A. I passed it for payment.

Q. You mean you approved it?

A. Yes, sir.

Q. In other words, Mr. Charles J. Katz would not have signed it until you approved it?

A. Correct.

Q. Does your approval appear any place on the face or the back of the check, your approval or mark?

A. No, sir.

Q. Do you have an independent recollection, Mr. Moore, of approving this particular check?

A. Not that particular one, no, sir.

Q. You just know that as a matter of practice and custom, checks are not supposed to be issued until you, as comptroller, pass on them?

A. That is right.

Q. But you all have hundreds of checks, and during the intervening period of time since 1953 you have probably had thousands of checks?

A. That is true.

Q. It being impossible for you to recall any one of them?

A. Not any particular one, no, sir.

Q. And as far as the actual detailed work of carrying a check or an envelope containing a check to be mailed,

do you attend to that or would that be left to someone else in your organization?

A. The stenographer mailed them.

Q. The only thing you would do with them was only okay it for signing?

A. Yes, sir.

Q. You did not mail it or see it mailed?

A. No, sir, I didn't see it mailed, but may I add something to that?

The Court: Yes, sir.

A. All of our checks are mailed. We never present them in person. We mail all our checks on bills, everything.

Q. Will you tell us how or from whom you received the tax receipt here, Government's Exhibit 56-B? Was that from Mr. Carlton Meredith in Dallas, or his office?

A. No, sir.

Q. From whom—where did you first see the receipt?

A. It came from the tax collector.

Q. Well, regardless of where it came from, please, sir, where, Mr. Moore, was Government's Exhibit 56-B when you first saw it? Was it on somebody else's desk there in your offices?

A. It came through the mail. I open all the mail that comes in the office.

Q. Then no one but you has authority to open the mail?

A. That is right.

Q. Do you recall independently everything, opening this particular mail?

A. No, sir, because at the time we had quite a number of them coming in.

Q. Does anybody ever help you open it?

A. No, sir.

Q. How many are you in that office, Mr. Moore?

A. Let's see. There is four, five, eight, about twelve of us besides Mr. Katz.

Q. Well, are both the Katz, Sid and Meyer, active in the organization?

A. Yes, sir.

Q. Now, was there any particular significance in the fact that this check was dated September 24, 1953? Was there any reason for sending it, since it was not due until January?

A. Yes, sir, to get our discount.

Q. That is why you mailed it.

A. Yes, sir.

Q. And you set up the policy or determined that as a policy of the Sid and Meyer Katz organization, did you, as comptroller?

A. Yes, sir.

Q. You always do that with all of your school districts, or any other taxes?

A. Any other taxes where there is a discount, we get them out as quick as we can, or before the last date.

Q. Are there other school districts in which either Sid or Meyer or Sid and Meyer Katz own oil royalties?

A. Other places, you ask?

Q. Yes, other than Benavides?

A. Yes, sir.

Q. Would you estimate approximately how many such

different districts these gentlemen have oil interests on which you supervise the payment of taxes?

A. That is hard to give definitely. I can guess at it.

Q. That is all I ask.

A. Between 25 and 30.

Q. And is the policy and practice the same with reference to all those districts?

A. That is right.

Q. That is the same practice, of sending the tax statements and mailing out checks and receiving a tax receipt?

A. That is right.

Q. Is there anything different about the modus operandi of the Benavides District from your, the taxpayer's, standpoint than any of the other 25 or 30 districts?

A. No, sir, no different.

Q. And you have been doing this 26 or 27 years?

A. Yes, sir.

Q. Since approximately the early days of the depression, 1930 or 1931?

A. March 21, 1931, is when I started.

Q. Is there any difference now in the practice than it existed when you started?

A. No, sir, no difference.

Q. That is all, thank you. By the way, do you have other business over here in Houston besides attending this trial?

A. No, sir.

Q. You were subpoenaed to come over here?

A. Yes, sir.

Mr. Foreman: No further questions.

Mr. Bottler: No questions.

4-920 R. R. KIRKPATRICK,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

4-920 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?

A. R. R. Kirkpatrick.

Q. Where do you live?

A. I live in Laredo, Texas.

Q. How long have you lived there?

A. About 30 years.

Q. Have you ever done any work for Annie Peal Barnes or J. B. Peal Properties?

A. Yes, sir.

Q. What have you done for them?

A. I have been their adviser in all mineral interests, and particularly the tax affairs.

Q. All right. I will hand you what has been marked for identification as Government's Exhibit 31, and ask you if you can identify it?

A. Yes, this is the check I brought here November 13.

Mr. Foreman: I didn't understand you, Mr. Kirkpatrick.

A. This is the check I brought here on November 13 of last year.

Q. All right. Whose signature appears thereon?

A. Mrs. Barnes, Annie Peal Barnes.

Q. What was that check, after it was made, given for?

A. In payment of ad valorem taxes in the year 1952.

Q. All right, sir. I will hand you Government's Exhibit

41 and Government's Exhibit 40, and ask you if you can identify those?

A. Yes, sir. I brought those in. This is my handwriting here (indicating).

Q. What are they?

A. Those are the tax receipts for the real estate and the minerals in the, what we call, the "Upper Ranch" in Duval County.

Q. Does that receipt cover the taxes paid by Government's Exhibit 31?

A. Yes, sir, the check covers both of those receipts.

Mr. Bottler: The Government offers into evidence as Government's Exhibit 31, 40 and 41.

Mr. Foreman: We object to those being received as to the first 19 counts because there is no allegation in any of the 19 counts. There is a reference to them in Count 20, and as to Count 20 we object to their being received generally to all defendants, and ask the Government to specify and the Court to limit the exhibits as to those defendants the Government contends they are pertinent. The time element is taken care of with our running bill.

The Court: Objection overruled, and Government's Exhibits 31, 40 and 41 are admitted in evidence.

Mr. Bottler: No further questions.

4922 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Kirkpatrick, Exhibit 31, the check, turning to the back there, see the endorsement's please?

A. Yes, sir. Ramiro Morin.

Q. Morin?

A. Yes, sir.

Q. That is the only signed endorsement on the back, isn't it?

A. Yes, sir.

Q. And above it is a stamp "Benavides Independent School District," a rubber stamp, isn't it?

A. That is correct.

Q. And it appears to have been cashed, at least, to pass through the Merchants Exchange Bank of Benavides, doesn't it?

A. I can't make that out very well. Yes, that is right.

Q. Mr. Kirkpatrick, does the name Annie Peal Barnes A-n-n-i-e P-e-a-l B-a-r-n-e-s, that is under J. B. Peal Properties, isn't it?

A. That is correct.

Q. And are you an independent oil man yourself?

A. I am a consulting geologist and mining engineer.

A. How long have you been such in Laredo, Mr. Kirkpatrick?

A. Since 1923.

Q. How long have you handled the J. B. Peal Properties, their tax matters in the manner in which you testified?

A. It is about 15 years. Since Mr. Peal died. I can't figure the date exactly, but about 15 years.

Q. Are you related by either blood or marriage to the Peals?

A. No, sir.

Q. Is it Miss or Mrs. Barnes?

A. Mrs.

Q. Do the Peal Properties own oil interests, mineral

interests, or have royalty interests in other school districts than the Benavides?

A. They have in the Webb County Common School District, yes, sir.

Q. And are the practices, insofar as the rendition of the tax statements, the sending of the checks, and the payment of the taxes the same?

A. I think so. Substantially so.

Q. In all the districts, then, as well as in Duval?

A. Yes, sir.

Q. Is it practice and custom, as you have outlined it to Mr. Bottler, is it the same now as it was when you first commenced handling the matter 15 years ago?

A. As far as I remember, yes, sir.

Q. Is there any significance in the fact that the taxes here were paid in October, when they were not necessarily due until January? Did you make the payment for any particular purpose and if so, what?

A. By paying in October, you receive a reduction.

Q. A discount for advance payment?

A. Yes, possibly three per cent or something like that.

Q. And is that the reason you send them in?

A. Mrs. Barnes sent that in. I okayed the bill, and she wrote the check.

Q. Did you establish the policy and practice of sending in early in order to get the discount?

A. She did that.

Q. She did it for the purpose as stated, to obtain the discount?

A. I think so, yes, sir.

Q. Who is Martela G. Peal?

A. That is her mother, the widow of J. B. Peal.

Q. And Annie Peal Barnes is the wife of what Mr. Barnes?

A. I have forgotten what his name is. He lives on a neighboring ranch there.

Q. Do they live in Bruni, Texas?

A. About three miles west of Bruni.

Mr. Foreman: No further questions.

Mr. Bottler: No more questions.

The Court: You may step down.

4-926 C. W. MOULDEN,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

4-926 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?

A. C. W. Moulden.

Q. How do you spell it?

A. M-o-u-l-d-e-n.

Q. Where do you live?

A. San Antone.

Q. By whom are you employed?

A. Gasoline Production Corporation.

Q. What is your title with them?

A. Vice president.

Q. Do you supervise and control the ad valorem tax records?

A. I do.

Q. You had that job in 1952 and 1953?

A. I did.

Q. Do you keep the ad valorem tax records of Gasoline Production Company currently?

A. Yes, sir.

Q. Do you keep them correctly?

A. Yes, sir.

Q. Is it part of the regular course of business of Gasoline Production Company to keep all canceled checks, your tax statements, and your tax receipts?

A. It is, yes, sir.

Mr. Foreman: May it please the Court, we object to any testimony or the introduction of any records of Gasoline Production Company because at no place in the indictment, either in the 19 substantive counts or in any overt acts of the 20th count, is any reference made to the Gasoline Production Company, and is in behalf of each defendant severally and as to each count, we object to any such testimony or exhibits with reference thereto being received in evidence for the reason we were not put on notice of the Government's intent, by the indictment, to offer any such testimony.

The Court: Does it go to the scheme generally?

Mr. Bottler: Yes, Your Honor, it goes to prove the scheme to defraud, also the conspiracy to defraud as charged in the 20th Count dealing with the cashing of checks.

The Court: Objection overruled.

Q. (By Mr. Bottler) I will hand you what has been marked for identification as Government's Exhibit 57-A, and ask you whether you can identify it?

A. Yes, sir.

Q. What is it, sir?

A. That is the check in payment of 1952 taxes to the tax assessor and collector of the Benavides Independent School District for the Gasoline Production Corporation.

Mr. Foreman: I can't hear hardly a word the man says.

The Court: I am going to ask that you speak out clearly and distinctly so everyone can hear you.

A. Government's Exhibit 57-A?

Q. 57-A, Mr. Moulden.

A. This is a check in payment of 1952 taxes to the tax collector and assessor of the Benavides Independent School District by the Gasoline Production Company.

Q. All right. What was done with that check after it was made up?

A. It was mailed to the tax assessor and collector of the Benavides Independent School District at Benavides, Texas.

Q. All right. Turning to Government's Exhibit 57-B, can you identify that?

A. That is the statement that was received by the corporation from the tax collector of the Benavides Independent School District of the taxes due for the year 1952.

Q. All right, and was this statement received before or after you mailed your check, 57-A?

A. It was received before.

Q. All right. Would you look at Government's Exhibit 57-C and state whether you can identify that?

A. That is the tax receipt covering the taxes that were

represented by the statement for the year 1952 covering the payment of the taxes.

Q. All right, and is that from the Benavides Independent School District?

A. That is correct.

Q. All right. Can you identify Government's Exhibit 57-D?

A. Yes, sir, that is the copy of the remittance advice to the tax assessor and collector of the Benavides Independent School District.

Mr. Foreman: A copy of which?

A. The remittance advice copy of the check, and a copy of the accounting information recording the transaction.

Q. I hand you what has been marked Government's Exhibit 58-A and ask you if you can identify this?

A. That is a check in payment of the 1953 taxes to the tax assessor and collector of the Benavides Independent School District issued by the Gasoline Production Corporation.

Q. All right. What was done with that check after it was made up?

A. It was mailed to the tax assessor and collector at Benavides.

Q. I will ask you to look at 58-B and ask you what that is, if you know?

A. That is a copy of the remittance advice to the tax assessor-collector of the Benavides Independent School District, copy of the check in payment of the 1953 taxes, and the accounting information recording the transaction.

Q. Will you look at Government's Exhibit 58-C and tell us if you can identify that?

A. That is the statement received from the tax collector of the Benavides Independent School District, and the amount of taxes due from the year 1953.

Q. Was this statement received before or after you mailed the check 58-A?

A. It was received before.

Q. Now, would you look at Government's Exhibit 58-D and I will ask you if you can identify that?

A. That is a tax receipt received from the collector of the—tax collector of the Benavides Independent School District of the taxes for the year 1953.

Q. Was this received before or after you mailed in this check, 58-A?

A. It was received after.

Q. How did you receive the tax statement and the tax receipt?

A. Mail.

Q. Now, were those records, 57-A through D kept as a part of the regular course of your business among the ad valorem tax records of the Gasoline Production Corporation?

A. Yes.

Q. Were Exhibits 58-A through 58-D kept as a part of the regular course of your business as part of the ad valorem tax records of the Gasoline Production Corporation?

A. That is correct.

Mr. Bottler: The Government offers in evidence 57-A through 57-D.

Mr. Foreman: We ask that that be limited as to the counts to which they are pertinent. We object to them

as to each defendant, as to each count, and say that if admitted at all, they should be limited to Count 20 in the indictment and to no other count, and as to that one, we have a running bill as to 57-A and all of 58-A through D. We renew our objection heretofore made to any testimony to the effect that there is no allegation either in the overt acts of the 20th count of the indictment, or any of the other 19 separate counts, referring in any way to any tax check for the Gasoline Production Corporation, and therefore we were not apprised of the pleading of the Government of their intent to offer this proof.

Mr. Bottler: Your Honor, the Government offers Exhibits 57-A, B, C and D, 58-A, B, C, and D as part of the scheme and artifice to defraud, as evidence on the conspiracy, as against all defendants on all counts on which they are charged and triable.

The Court: Objection overruled, and Government's Exhibits 57-A, B, C and D, 58-A, B, C and D are admitted as to all defendants on all counts with which they are charged and triable.

Mr. Foreman: Admitted generally, and not limited, Your Honor?

The Court: Yes, sir.

Q. (By Mr. Bottler) Mr. Moulden, did you ever pay out any taxes, ad valorem taxes, without first receiving a tax statement from the taxing authority?

A. No, sir.

Mr. Bottler: No further questions.

Q. (By Mr. Foreman) Mr. Moulden, did you testify last November?

A. Yes, sir.

Q. And you came here only for this case, in response to a subpoena?

A. That is right.

Q. How long have you been here?

A. Since Wednesday.

Q. Of last week?

A. That is right.

Q. Mr. Moulden, you, yourself, or anybody in the Gasoline Production Corporation never entered into any conspiracy to have your money used for any other purpose? You are not a party to any conspiracy, are you?

A. No, sir.

Q. And in paying these taxes, you simply paid them as you pay other taxes in other—on other oil properties you own in other school districts?

A. That is correct.

Q. And through the Gasoline Production Corporation, do you own numerous mineral interests in various independent school districts?

A. That is correct.

Q. Would you just tell us in your best estimate roughly, without either of us caring whether it is exactly accurate, the approximate number of school districts in which Gasoline Production owns interests, and therefore pays taxes?

A. It would have to be a guess.

Q. Your best judgment is all we could ask for.

A. Oh, I would say eight or ten.

Q. And is there any difference in the manner or prac-

tice of receiving statements, mailing checks, and receiving receipts, from the Benavides Independent School District than any of the other seven or eight or nine districts?

A. No, sir, not that I know of.

Q. It is all the same? I notice that both of these checks are dated in the month of September. Was there a reason for sending them at that time, as distinguished from a later time?

A. To take the discount.

Q. Then the reason these were placed in the mail at the time they were so placed was in order to take the discount?

A. Yes, sir.

Q. Do you, perchance, recall the discount allowed by that district?

A. That would also have to be a guess, but I think it is three per cent.

Q. How long have you been connected with Gasoline Oil Production, Mr. Moulden?

A. Since 1942.

Q. Is there any difference in the practice as it prevails now, Mr. Moulden, than as it prevailed in 1947, insofar as receiving payments and mailing the checks are concerned?

A. No, sir, none.

Mr. Foreman: That is all.

4-935 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Do all independent school districts give discounts if you pay earlier, or do you know?

A. No, sir, I do not.

Q. Some independent school districts grant these discounts if you pay i. September and October, and others do not?

A. That is correct. It is usually three per cent in September, two per cent in October, and one per cent in November.

Q. And the Benavides Independent School District was a school district that did grant that discount?

A. Yes. I am not sure of the rate. I would have to refer to the records.

Mr. Bottler: No further questions.

4-936 RECROSS EXAMINATION

Q. (By Mr. Foreman) I would like to establish the endorsement. I overlooked it.

With reference to Exhibit 57-A, Mr. Moulden, the only endorsement on there is a rubber stamp endorsement "Benavides Independent School District, Taxation Department"?

A. I woudn't say that is the only endorsement. There are other endorsements.

Q. Those are bank stamps?

A. That is difficult to determine, but I presume they are because they are stamped on one another.

Q. And you see banks down there, if you examine it carefully, don't you?

A. It is usually the clearing house and various branches it cleared through.

Q. Was the branch the Federal Reserve Branch—the Federal Reserve Bank of Dallas, Texas?

A. That is correct.

Q. Can you determine what date that is—October—1952, San Diego State Bank?

A. I would have to guess at that. It looks like October 9, 1952, to me.

Q. All right, sir. That is Government's Exhibit 57, and there is no signature, nothing on the back except the rubber stamp, is there?

A. That is correct.

Q. We keep saying rubber, and nowadays there is a lot of substitutes for rubber, and with reference to 58-A, being a check for September 30, 1953, for $1143.10, that likewise is simply rubber stamps on the back, aren't they?

A. Well, I don't know whether D. C. Chapa is a rubber stamp or whether it is written with a red pencil. I wouldn't want to say.

Q. What is your best judgment, without committing yourself, as to whether that is a facsimile stamp signature or not?

A. Well, Your Honor, I am not a signature expert.

Mr. Foreman: It is His Honor. That is all right. That is all, Your Honor. Thank you.

4-937 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Looking on the back of Government's Exhibit 58-A at the stamp of the San Diego State Bank, what day is shown on that as the day of cashing?

A. October 14, 1953.

Q. October 14, 1953?

A. Yes.

Mr. Bottler: Thank you. No further question.

Mr. Foreman: That is all, Your Honor.

The Court: You may step down, sir.

4-938 J. H. DINN,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

4-938 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?

A. J. H. Dinn.

Q. Where do you live, sir?

A. Hebbronville, Texas.

Q. Do you live on a ranch or in town?

A. Both places. I live on a ranch and in town. We are ranchers in Duval County and I have lived there mostly.

Q. Who is J. T. Dinn?

A. He is my father.

Q. How old is he?

A. Seventy-eight.

Q. I will hand you what has been marked for identification as Government's Exhibit 60-A, and I will ask you if you can identify it?

A. Yes, it is a check. Do you want the figures on it—for $609.57, given by my father to the Benavides Independent School District.

Q. Do you know what year this covers?

A. 1953.

Q. I will hand you Government's Exhibit 60-B and ask you if you can identify it?

A. It is a tax receipt given by the Benavides Independent School District for taxes for the year 1953.

Q. All right. For what sum?

A. $609.57.

Q. Is John T. Dinn, Star Route, Bruni, Texas, the same as J. T. Dinn?

A. Yes, sir.

Q. Is that your father?

A. That is my father.

Mr. Bottler: The Government offers Exhibits 60-A and 60-B.

Mr. Foreman: We object to their being received in evidence, as Exhibits 60-A and 60-B, for the reason that there is no allegation with reference to any of these being sent through the mails in any of the 20 counts of the indictment, or any of the overt acts alleged in Count 20 of the indictment, and the defendants interpose their objections individually and as to each defendant, and ask that the exhibits be limited to whatever counts they are claim to be pertinent, and we respectfully call the Court's attention to the fact that the date September 29, 1953 is of such remoteness from the September 29, 1952 date, as our theory indicates, as not to be admissible to the 20th count.

May we ask one question before the Court rules?

The Court: Very well.

4-490 VOIR DIRE EXAMINATION

Q. (By Mr. Foreman) Mr. Dinn, was this check ever sent through the mails, this check 60-A, or was it carried in person to the district office?

A. The check was given at the Independent School District office in person.

Q. Was that where the receipt was obtained?

A. Yes, sir.

The Court: What says the Government?

Mr. Bottler: Your Honor, we point out that this check and receipt are not charged as a separate mailing count, but are merely offered as evidence thereto to show the scheme to defraud as alleged in the indictment, depositing in the San Diego State Bank. It is offered against all defendants as to all counts on which they are charged and triable on the scheme to defraud, and also the conspiracy.

The Court: It will be so received. Objection overruled. Government's Exhibits 60-A and 60-B are admitted in evidence.

Q. (By Mr. Bottler) May I have Government's Exhibit 60-A, please?

Turning to the back of 60-A, I will ask you if you see what appears to be a facsimile endorsement "Benavides Independent School District, Taxation Department, D. C. Chapa"?

A. Yes.

Q. All right. Now, do you also see another stamp thereon?

A. Yes.

Q. Does that appear to be the stamp purporting to be the San Diego State Bank, showing the cashing of the check on October 14, 1953?

A. Yes, it does.

Mr. Bottler: No further questions.

The Court: Will there be any further questions from the defendants?

Mr. Foreman: I want to see this before I determine, Your Honor.

The Court: Very well.

4-942 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Dinn, did your father sign this check and give it to you, this 60-A? It is signed J. T. Dinn. You are J. H. Dinn.

A. I am J. H. Dinn, yes sir.

Q. Did you sign the check, or did your father sign it?

A. My father signed it.

Q. He signed it in Hebbronville, or do you know?

A. No, the check was signed at the tax office.

Q. He went with you, or did you go with him?

A. We both went together.

Q. I see, and do you recall to whom you gave the check, to what individual?

A. In the office, in the tax office?

Q. Yes, sir.

A. No, sir.

Q. You don't recall whether it was a man or a woman you gave it to?

A. I couldn't say positively. I will say that usually there is a girl in there, but I couldn't say positively, no, sir.

Q. Is it your best recollection it was a girl you gave it to?

A. I couldn't say for sure.

Q. Do you know D. C. Chapa?

A. Yes, sir.

Q. Did you give it to him?

A. No, sir.

Q. Did you get the receipt at the same time that you gave the check?

A. Yes, sir.

Q. The receipt is signed D. C. Chapa without anybody else's name, isn't it?

A. No, sir.

Q. Did you see the lady sign the name D. C. Chapa to that tax receipt?

A. I couldn't say whether she signed D. C. Chapa or not.

Q. At any rate, it doesn't say D. C. Chapa by anyone, but it says D. C. Chapa?

A. No.

Q. And as far as you know, she may have written D. C. Chapa at the time she gave you the receipt, might she not?

A. Yes.

Mr. Foreman: That is all.

Mr. Bottler: No further questions.

The Court: It is now 10 minutes of five. Is your next witness a short one or a long one?

Mr. Bottler: A short one.

Mr. Foreman: It might not be on cross examination, Your Honor.

The Court: Who will be the next witness?

Mr. Bottler: Mr. P. W. Pitzer. He is a tax expert.

The Court: I understand. Suppose we call him and cover his direct, and we will defer the cross until tomorrow morning.

Mr. Foreman: May it please the Court, solely for the record, we object to any testimony from this witness or any exhibits for the reason that there is no allegation in the indictment as to any checks or taxes paid by P. W. Pitzer, or any company with which he is associated, either his father or his brother, either in the substantive counts, the first 19 counts, or in the alleged conspiracy, Count 20, and for that reason and as to each defendant and as to each count, we object to the testimony being received with reference to the receipt of tax statements and payment of taxes or receipt of tax receipts from this witness.

The Court: Objection overruled.

Mr. Foreman: May it be understood we have that without renewing it?

The Court: Yes, sir.

4-945 P. W. PITZER, JR.,

a witness called in behalf of the Government herein having been first duly sworn on oath, testified as follows, to-wit:

4-945 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?
A. P. W. Pitzer, Jr.
Q. And who is R. A. Pitzer?
A. He is my brother.
Q. What business are you in?
A. Independent oil operator.
Q. Who is P. W. Pitzer?
A. That is my dad.
Q. And what businees is he in?
A. He is an independent oil operator.
Q. Where do you live?
A. Breckenridge, Texas.
Q. Where do your brother and father live?
A. Now?
Q. No, in the years 1952 and 1953?
A. They lived in Breckenridge also.
Q. I will hand you what has been marked for identification as Government's Exhibit 59-A, and I will ask you whether you can identify this check?
A. Yes, that is a check that I signed on Pitzer & Sons, which was a partnership consisting of R. A. Pitzer and myself.

The Court: Mr. Pitzer, I will ask you to keep your voice sustained. Witnesses so often get the feeling, when

the attorney stand by their side, they are carrying on a conversation with him but this is testimony in court, and it is important that everyone hear you and I will ask that you speak out clearly so everyone can hear you.

Q. (By Mr. Bottler) What is Government's Exhibit 59—what was 59-A written for? What was this check written for?

A. It was a check written to the tax assessor and collector of the Benavides Independent School District for tax on properties we owned in Duval County.

Q. For what year?

A. 1953.

Mr. Foreman: 1950-when?

A. Three.

Q. I will hand you Government's Exhibit 59-B and ask you if you can identify this?

A. Yes, it is a tax receipt from the Benavides Independent School District we received for that check.

Q. All right. For what year?

A. 1953.

Q. Is this an original, or a photostat copy?

A. It is a photostat copy.

Q. I will hand you what has been marked for identification as Government's Exhibit 61 and ask you if you can identify it?

A. Yes, it is a check on Pitzer & West signed by my father, P. W. Pitzer.

Q. To whom was it made payable?

A. The Benavides Independent School District.

Q. And what is the date?

A. The date is September 22, 1952.

Q. All right.

Mr. Foreman: We interpose the further objection with reference to his father's business for the reason that we do not recall the record established that he had custody of his father's accounts or kept their records. The predicate has not been laid as to source.

The Court: What says the Government?

Mr. Bottler: He has just identified this as being one of his father's checks. He has identified them, I believe, from the signature.

Is that how you identify this check?

A. Yes, sir.

The Court: That is the check signed by his father?

Mr. Foreman: Yes, it is signed Pitzer & West by P. W. Pitzer.

The Court: Very well. Objection overruled.

Q. (By Mr. Bottler) What is Pitzer & West?

A. It is a partnership consisting of P. W. Pitzer and C. K. West.

Q. Is this a form check Pitzer & West uses?

A. Yes, it is.

Q. I will hand you what has been marked for identification as Government's Exhibit 62, and ask you whether you can identify this?

A. Yes, it is a check on Pitzer & Sons, signed by R. A. Pitzer to the Benavides Independent School District for $728.23, dated September 22, 1952.

Q. All right. Now, is this a check on the firm of Pitzer & Sons?

A. Yes.

Q. And who is R. A. Pitzer?

A. He is my brother.

Q. Is that his signature?

A. It is.

Q. Were these checks, 59-A, 61 and 62 canceled and returned to you with the bank statements?

A. Yes, they were. Pitzer & West was returned to Pitzer & West, and the other two returned to Pitzer & Sons.

Mr. Bottler: The Government offers in evidence Government's Exhibit 59-A, 59-B, 61 and 62.

Mr. Foreman: May it please the Court, we submit that as to 61, this man has shown no connection with it other than to identify his father's signature, and he has shown no independent information that would make hime peculiarily able to testify as to what it was for, and the proper predicate has not been laid as to the defendants and each of them, it is hearsay, and we object to it for that reason, separate from our other objection which we have heretofore interposed with reference to Exhibit 62 and 59-A, being checks of Pitzer & Sons; object to them that they should not be admitted generally. They should be limited to whatever count the Government claims they pertain, and for whatever purpose the Government claims they offer them. The Government should be required to state for what they offer these individual checks, Government's Exhibits 62 and 59-A, and as to 59-A, the objection heretofore made as to any transactions after the 29th of September 1952 would apply, it being issued on September 14, 1953.

Mr. Bottler: Are you through, Mr. Foreman?

Mr. Foreman: Yes, sir.

Mr. Bottler: May I see the exhibits?

The Government withdraws at this time its offer of Government's Exhibits 61 and 62, and offers Government's Exhibits 59-A and B to show the—as part of the scheme and artifice to defraud, and as the conspiracy is charged in the first 19 counts on mail fraud and the 20th count under conspiracy as against all defendants on all counts in which they are charged and triable.

The Court: Government's Exhibits 59—the defendants' objection to Government's Exhibits 59-A and B are overruled, and 59-A and B are admitted in evidence as to all defendants.

Will there be any further interrogation by the Government?

Mr. Foreman: As to all counts.

The Court: As to all defendants, as to all counts on which each defendant is charged and triable.

Mr. Foreman: And the Court declines to limit?

The Court: Yes, sir.

Mr. Bottler: No further questions.

The Court: Very well, the jury is reminded of the instructions previously given.

Court is adjourned until 9:30 tomorrow morning, and, Mr. Pitzer, at that time will you return for cross examination?

The Witness: Yes, sir.

The Court: Court adjourned until 9:30 tomorrow morning.

MORNING SESSION—MAY 14, 1957

The Court: We have reached the cross examination of the Witness P. W. Pitzer, Jr. You may proceed with cross examination.

4-952 P. W. PITZER, JR.,

being the witness who was on the stand at the time court recessed on May 13, 1957, resumed the stand at this time, and continued his testimony as follows:

4-952 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Pitzer, in what other school districts do Pitzer & Sons own oil interests than—that is, other than Benavides?

A. D you want to know now, or at that time?

Q. At that time, or at any time in the past without knowing the name, just approximately the number of school districts?

A. Two others.

Q. Located in different counties?

A. Yes.

Q. And were there any—was there any difference in the prcedure or process by which the Benavides Independent School District sent out, collected—sent out its statements, collected tax checks, and remitted tax receipts between the three districts where you owned mineral interests?

A. As far as I know, there was no difference.

Q. And how long have you been familiar with the practice of these various school districts in preparing, sending out tax statements, receiving checks, and mailing out tax receipts?

A. I have been an independent oil operator since 1940. I suppose I would know since 1940.

Q. Is there any difference prevailing in the years 1950, 1952, 1953 and 1954 other than there was in 1940, 1941, 1942, and 1943 when you paid taxes on mineral interests?

A. So far as I know, there is no difference.

Q. This 59-A, this check for $994.40 is dated September 14, 1953, for taxes due up to December 31. Will you please explain the motive or reason by which this was mailed, or the cause of its being mailed as early as it was, that is September 14th?

A. We always pay our taxes in September.

Q. And is there a reason for that, Mr. Pitzer?

A. Well, no, no particular reason, except where you save your discounts.

Q. That is what I was developing. Then you did mail this check at the time you mailed it in order to save whatever per cent discount there was for early payment of taxes?

A. Yes. I don't remember whether there was any discount on that one or not, but if there was that is the reason we mailed it.

Q. Very well. We will clear that up by the statement, Mr. Pitzer. I know you don't recall it. 59-B is introduced as a tax receipt of the Benavides Independent School District, to-wit total tax due $1025.15, discount $30.75, leaving $994.40, the amount of the check?

A. That is right.

Q. There was a saving of $30.75 to be gained by mailing it in September?

A. Yes, sir.

Q. That would be approximately three per cent of $1025.15?

A. Yes, sir.

Q. $30.

A. Yes.

Q. And also not only the discount, but you wanted to keep your taxes currently paid so as to avoid a penalty for late payment?

A. That is right.

Mr. Foreman: That is all, Your Honor.

4-954 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Do you pay all your taxes in September?

A. Yes, generally so.

Q. Regardless of whether there is a discount offered or not?

A. Yes.

Q. Do some independent school districts offer discounts, and others not?

A. Yes.

Mr. Bottler: No further questions.

The Court: Is that all, gentlemen?

Mr. Foreman: That is all, Your Honor.

The Court: Very well. Mr. Pitzer, you may step down.

Mr. Bottler: Your Honor, the Government would like to request the Court to take judicial notice of certain Texas Statutes. We have prepared for the Court's convenience a summary—

Mr. Foreman: We would like for it to be done in the absence of the jury. I don't recall at this time whether there will be an objection or not, but for him to state them is not—if it is something for the Court, the jury has no right to hear it.

The Court: Very well, the jury will be withdrawn.

(The following proceedings were had out of the presence and hearing of the jury.)

The Court: You may proceed.

Mr. Bottler: Your Honor, in the absence of the jury, the Government requests the Court to take notice of Article 2763-a, Section 1—would the Court care to have a copy?

Mr. Foreman: May we have one, too?

Mr. Bottler: I have already furnished two copies to Counsel. The first statute which we request the Court to take judicial notice of is Section 1 and 2 of Article 2763-a. Section 1 provides that an independent school district may select and designate its own school depository and also its own assessor and collector of taxes, and Section 2 provides that the Board of Trustees, after selecting and designating said districts own depository and its own assessor and collector of taxes, shall thereafter maintain and control the public free schools within said district to the exclusion of every other authority except insofar as the State Superintendent of Public Instruction and the State Board of Education may be vested with supervisory authority to instruct said board.

The second statute that the Government requests judicial notice of is Article 7083-a of the Texas Revised Civil Statutes, which provides that under Section 1, all revenue, other than that part allocated for enforcement purposes, derived and collected from the taxes levied by Chapter 241, Acts of the Regular Session, 44th Legislature, and any Amendments Thereof or Thereto shall be hereafter and is hereby allocated as follows:

One-fourth to the available school fund of the State of Texas and three-fourths into the clearance fund provided by this Act.

The third statute which we request the Court to take judicial notice of is Article 2827, Sections 1 and 2, which provide for the approved methods for expenditure of public free school funds, Section 1 dealing with the use, the exclusive use of state and county available funds for payment of teachers and superintendents' salaries, fees for tak-

ing the scholastic census, and interest on money borrowed on short time by the school district. Section 2 provides for the approved uses for which local school funds derived from district taxes, tuition fees of pupils not entitled to free tuition and other local sources may be used, under the Acts of 1905 and the Acts of 1919.

The next statute which we request the Court to take judicial notice of is Article 301 of Vernon's Annotated Penal Code which provides that the State Superintendent of Public Instruction shall require certain officials, including depositories of school boards and other school officers and teachers such school reports relating to the school fund and to other school affairs as he may deem proper for collecting information and advancing the interests of the public schools, and shall furnish the depository, among other officers, the necessary blanks and forms for making such reports and carrying out such instructions as may be required of them.

The last statute which we request the Court take judicial notice of is Section 1, Article 2654-5 which establishes the position of State Commissioner of Education, and transfers to him all powers and duties heretofore vested in the State Superintnedent of Public Instruction. Is there any objection?

Mr. Sharpe: Your Honor, we would like to inquire of counsel if the purpose of this request is to have the statutes read to the jury at this time?

Mr. Bottler: Your Honor, we think it would be appropriate to read the statutes into the record. I see no reason for hiding from the jury the applicable law, which they will consider in rendering a decision on the case, of course.

Mr. Sharpe: If that is the case, Your Honor, we object to these statutes being read to the jury at this time, for the following reasons:

First of all, it is obvious that the request relates to matters of law. Matters of law are for the Court, and under the established procedure, the statutes and rules, the Court is charged with the duty of submitting the law to the jury at the end of the case, after the argument of counsel, so at this time it would be improper and inappropriate for the Court to charge the jury piecemeal on the law.

Secondly, this request is premature. It comes before the facts are fully developed. All of the evidence is not in. Now, it may be that at the end of the case, some of these statutes may be applicable and entire proper for the Court to give, and others may not. It may further develop as the evidence progresses here, that there will be other statutes. If the evidence is the same as it was in the last trial, Your Honor, I anticipate that there will be other statutes particularly relating to the functions of the Board of Equalization of a school district, because certain exhibits were offered and I anticipate will be offered relating to that function of the school district. These statutes do not purport to cover that particular phase of the case, and then next, in effect this will just constitute argument by counsel for the Government of the law prematurely. Now, there is a further and more serious objection, Your Honor, to one of these proposed statutes, than there is to the others, and that is with reference to Vernon's Annotated Penal Code, Article 301. The Government has based its case, Your Honor, on that particular article, and it appears at Page 5 of the indictment under Subdivision Q of Paragraph 16. Now,

the annotation there is that said reports, referring to all of these exhibits which have been offered and admitted here for the years in question, and I quote from the indictment, "being required by Article 301 of the Texas Penal Code." If Your Honor please, an analysis of that statute will show that it does not require annual reports in Texas of an independent school district. That is the first point. It simply does not cover independent school districts, and the wording of it in the legislative history will so show.

Secondly, on its face it shows that whatever reports are contemplated by it shall be required by the State Superintendent of Public Instruction. I concede, of course, since enactment of the statute, Article 2654 or 5 that the Commissioner of Education has replaced the State Superintendent of Public Instruction, so the admissibility of these exhibits, these annual reports that have already been offered into evidence, or dependent, under the Government's own allegation, on Penal Code Article 301, and secondly, as a necessary and required predicate, the Government would have to show, assuming it is applicable to independent school districts, that the Commissioner of Education or his predecessor has passed some rule, regulation, or order requiring these reports. In this case here, Mr. O'Connor was not asked those questions. He was in the preceding trial, and the record will show he never produced, and hasn't produced to this day, any such rule, regulation or order of either the State Superintendent of Public Instruction or the Commissioner of Education.

For all of these reasons, Your Honor, we submit the Government's request should be denied.

The Court: Is there any contention that these statutes are not exact copies of existing statutes?

Mr. Sharpe: Your Honor, I haven't compared them word-by-word. If they are not, I am sure we wouldn't have any trouble. We could correct them on comparison. There is no omission indicated. I don't know what words are indicated in the Article 301, right in the middle of the paragraph.

The Court: Yes.

Mr. Bottler: If the defense wishes, the other part may be put in. It is just a lengthy part of the article which does not apply to the case with regard to—if the defense objects to reading the statutes into the record. Now, we have no objection to having the Court charge the jury. All we want to do is request the Court to take judicial notice of these statutes at this time.

The Court: The Court takes judicial notice of all the statutes, of the laws, of the statutes including these statutes. I think the issue in point here is one if procedure, whether they should properly be read to the jury ostensibly as evidence.

Mr. Bottler: Your Honor, I think it is proper probably either way, whether the Court—

The Court: The Court will take judicial notice of these statutes and I will take under advisement whether or not they should be read to the jury, and I will not rule at this time.

Will you recall the jury, please?

(The following proceedings were held in the presence and hearing of the jury.)

The Court: The Government may call its next witness.

Mr. Wilkey: Mr. B. G. Moffett.

Mr. Foreman: May it please the Court, may we approach the Bench?

(The following proceedings were had at the Bench out of the presence and hearing of the jury.)

Mr. Sharpe: If the Court please, we know, in connection with the testimony of this witness, Mr. B. G. Moffett of Corpus Christi, from having heard his testimony at the trial here in November, that all of his testimony relates to matters which occurred completely beyond any period of limitation which might apply in this case. It is my best recollection that his testimony involved, at the latest, the year of 1949. It may be possible—

Mr. Foreman: 1950.

Mr. Sharpe: It was as late as 1950. At any event, his testimony would not reach the date of September 1, 1951. His testimony is to the effect that he received certain payments from the Benavides Independent School District for services which were not rendered. We say that the evidence is not admissible for any purpose whatsoever.

We say, secondly, and alternatively, and without waiving the first objection, that as to admissibility, if it is admissible for any purpose, it should be limited to the question of whether any scheme or artifice to defraud existed up to the last date about which he testified, and that testimony could not be considered for any purpose that the scheme or artifice to defraud extended over to the first date or the earliest date set out in the indictment, and that if admissible for any purpose on the 20th count of the indictment, this testimony would relate only to the existence of a conspiracy up to the last date about which Mr. Moffett will testify, which in any event is prior to September 1, 1951. The testimony is highly inflammatory and is prejudicial to the defendants likewise, if admitted at all, and will be especially prejudicial if it is not so limited, and makes the distinction it does not connect or relate to all of the defendants. At most, it would involve only one or two or three of them, and we therefore ask the Court—this testimony is very brief. I think last time it did not take ten minutes. We ask the Court to hear this testimony first, and to rule upon each of our objections before the testimony is heard by the jury.

The Court: What says the Government?

Mr. Wilkey: It is true, Your Honor, that this testimony relates to the years 1949 and 1950. I don't know that it is any later than that, but it is part of the scheme and artifice to defraud.

The Court: Is it offered for intent, design and scheme?

Mr. Wilkey: It is directed in regard to the allegations in Paragraph 14, which is that they concocted this scheme

and artifice to defraud for the benefit of themselves, the support of their relatives, and in relation to Paragraph 16, sub-paragraphs h and i, which relates to the payment to persons for services never rendered, et cetera. The statement as to what the evidence should be limited to, made by the defense, is fairly broad and embodies most of the relevant deductions that would be drawn from this evidence, but we offer it on all purposes in relation to the concoction of the scheme and intent, motive and design. It is the sample of the type scheme it was in the years charged in the indictment.

The Court: I will hear the testimony.

Mr. Wilkey: Your Honor, we have a transcript of the preceding testimony. We would be glad to let the Court read that, and it is our intention—

The Court: As I understand the objection generally, they are because it will relate to testimony prior to September 1951, and, consistent with prior rulings of the Court, I have admitted evidence all through this trial of this case prior to that date, and testimony will be received, if it relates to and is for the purpose of showing intent, design and scheme.

Mr. Wilkey: That is the purpose of the offer.

The Court: Yes.

Mr. Sharpe: Your Honor, may I say one thing further?

The Court: Yes.

Mr. Sharpe: I want to clarify the defendant's position insofar as I can in connection with these objections. First of all, it is our position that the testimony involved is before September 1, 1951 and is not admissible for any purpose, and secondly, if we are in error in that position, then we insist that there should be a limited instruction as to this evidence to the effect that it should be considered only on the scheme or artifice to defraud or the conspiracy, this isn't up to the latest date, but testified about by the witness and this, too, is not evidence of any scheme or artifice to defraud after September 1, 1951, or conspiracy after that date.

Mr. Wilkey: It seems to me counsel is asking for a comment on the weight of the evidence by the Court. It seems any evidence offered would, on this reasoning, call for the same comment, that it was to be taken as being only on the dates this man testified about. Of course, that is all we offered.

The Court: If the man testifies to certain dates, they will only consider his testimony as to the dates he testified about under a general charge.

Mr. Sharpe: Yes, Your Honor, but it is so important—

Mr. Foreman: You can't tell whether they would or not.

The Court: Under a general charge, it must be expected that they will follow the charge. Now, I can't say whether the jury follows the charge in any case or not, but if we are going to assume juries do not follow charges, then our whole system breaks down, and we will have to devise a

new one. That is the system I am working under, that when I charge a jury that I must expect that they will follow it, and I will not instruct the jury that they will accept the testimony for limited purposes. I will give no specific charge on it.

Mr. Foreman: In other words, it will be admitted as to all charges as to all defendants without any limitation?

The Court: Yes, sir.

Mr. Foreman: May it please the Court, might we interpose that objection as to each question and each answer from Moffett without our interrupting to make the objection?

The Court: If it is for the reason here so stated, you need not make the interrupton and I think your objections are rather broad and general, and they may be—you may have a hearsay or a leading objection, but otherwise your objections are pretty well covered.

Mr. Sharpe: Your Honor, I don't want to be understood as taking the positon the jury would not follow the Court's instructions. All I am asking for is a limited instruction.

The Court: Yes, I understand that. I don't think that is in order.

Mr. Foreman: It won't be necessary to have the hearing? Is it understood and agreed and stipulated that if there is anything we could prove by the jury being retired that we haven't already stipulated by the Government—

Mr. Wilkey: No.

Mr. Foreman: Then there is no need for that delay.

The Court: What delay do you mean?

Mr. Foreman: Mr. Sharpe had requested the jury be retired, and Mr. Wilkey suggested, in the alternative, he present the Court a copy of the testimony. I asked if there was anything that could be established by the Court reading the testimony of Mr. Moffett or hearing it in the absence of the jury that had already been agreed and stipulated by Mr. Wilkey.

Mr. Wilkey: I don't understand I stipulated anything.

Mr. Foreman: You stipulated, Mr. Wilkey, that all he could testify to was prior to September 1, 1951.

Mr. Wilkey: I believe that is correct, and that the evidence will show.

Mr. Foreman: That is what I had reference to. That is all that could be established, wasn't it? Then you would stipulate?

Mr. Wilkey: All right.

The Court: Very well. I want this indicated this is all out of the presence and hearing of the jury.

(The following proceedings were had in the presence and hearing of the jury.)

The Court: The Government will call its next witness.

4-970 B. G. MOFFETT,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

4-970 DIRECT EXAMINATION

Q. (By Mr. Wilkey) State your name, sir?

A. B. G. Moffett.

Q. Where do you live?

A. Corpus Christi.

Q. Are you related to any of the defendants in this courtroom by blood or marriage?

A. Yes, sir.

Q. Which one?

A. George Parr.

Q. What is your relation to Mr. Parr?

A. Brother-in-law.

Q. What is the name of your wife?

A. Lillian Parr Moffett.

Q. Is your wife, Lillian Parr Mogett, a director, or was she a director of the former Texas State Bank of Alice?

A. I don't know whether she was a director or not, but she was a stockholder in it.

Q. Are you a licensed attorney?

A. Yes.

Q. Did you ever receive compensation or legal fees from the Benavides Independent School District?

A. Yes, sir.

Q. During what period of time?

A. I don't remember. The last was May 1950.

Q. Over what period of time prior to May '50?

A. Two or three years, I think.

Q. And how much did you receive per month or per year or per week, or whatever the pay period was?

A. $500 a month.

Q. $500 a month?

A. Yes, sir.

Q. In what form did you receive that pay?

A. Checks.

Q. And where did you get it?

A. I got it from Benson.

Q. And where?

A. In San Diego.

Q. And where was Mr. Benson's office when you got that check?

A. It was across from the court house there.

Q. Whose building is that?

A. I think it was George Parr's.

Q. Were you subpoenaed to bring with you certain documents when you came up here?

A. Yes, sir.

Q. Did you bring those with you?

A. I didn't have any.

Q. Did you bring with you any legal memorandum prepared by the Benavides Independent School District?

A. No, sir.

Q. Do you have any such?

A. No, sir.

Q. Did you bring with you any contract prepared or

copies of them prepared for the Benavides Independent School District?

A. No, sir.

Q. Do you have such?

A. No.

Q. Did you bring with you any correspondence you ever had with the Benavides Independent School District?

A. No.

Q. Do you recall any correspondence you ever had with the Benavides Independent School District in relation to your employment or any work you were doing for the Benavides Independent School District?

A. No.

Q. Did you bring with you any briefs, any legal brief prepared for the Benavides Independent School District?

A. No.

Q. Do you have any such in your files?

A. No.

Q. Do you recall preparing any contract, brief, legal memorandum or otherwise for the Benavides Independent School District during this period you received $500 a month?

A. No.

Q. Did you ever attend a school board meeting, or meeting of the Board of Trustees of the Benavides Independent School District?

A. No.

Q. Were you consulted by Mr. Octavio Saenz, the president of the board, on any legal questions?

A. No.

Q. Were you ever consulted by any member of the Board of Trustees on any legal question?

A. No.

Q. Do you recall doing any legal work whatsoever for the Benavides Independent School District during this period?

A. I gave some information to some of the employees, yes.

Q. What type of information?

A. Statutory information.

Q. And when was that?

A. I don't recall.

Q. Who was it?

A. I don't remember.

Q. On how many occasions was it?

A. Two or three.

Q. During those two or three years?

A. Yes.

Mr. Wilkey: All right, sir. No further questions.

4-974 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Moffett, were there any attorneys, licensed attorneys, living or practicing in the City of Benavides, to your knowledge, at any time between the years 1947, 1948, 1949 and 1950?

A. Not to my knowledge, no.

Mr. Foreman: That is all.

Mr. Wilkey: No further questions, Your Honor.

The Court: Stepsdown.

(Short interval.)

Mr. Foreman: Your Honor, the witness asked if he could be excused and I said yes. I wish somebody would advise him that I just meant it was agreeable with me.

The Court: You mean the Witness Moffett?

Mr. Foreman: Yes, sir. He asked if he could be excused and I said yes, and he may interpret that as if I had the right to excuse him.

Mr. Wilkey: I said the same thing to him. I thought we had worked that out and the Court had ruled on it.

Mr. Foreman: I know, but I didn't know you had said that, and I didn't want to be charged with it in the event he wasn't here.

4-975 L. T. CRAMER,

a witness called in behalf of the Government herein, having been first duly sworn on oath testified as follows, to-wit:

4-975 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?

A. L. T. Cramer.

Q. By whom are you employed?

A. Continental Oil Company.

Q. How long have you been employed by the Continental Oil Company?

A. Twenty-seven years.

Q. What was your position or title with the Continental Oil Company in 1952 and 1953?

A. Assistant Division accountant.

Q. And what did your duties include?

A. I had general supervision of our marketing accounting office, among other things, would supervise the preparation and the mailing of monthly statements to customers.

Q. All right, sir. How did you go about preparing monthly statements to go to your credit customers, that is credit customers who had credit cards?

A. The incoming invoices currently through the month would be sorted into ledgers, and filed against customer ledger cards within those ledgers prior to a billing date. Monthly statements would be typed out on these customers who had been making purchases, and on a selected billing date, the invoices that had been filed there would be stapled in behind the monthly statement, and they would be sent over to the comptometer unit in order to determine the amount of purchases that had been made, and that amount would be posted on the face of the monthly statement.

Q. After the monthly statement was thus prepared, what was done with it?

A. When we were satisfied we had tied it into the ledger balance, the customers' statements would be stuck into window-face envelopes for mailing to our customers.

Q. How did you place postage on the envelopes?

A. Through the use of a Pittman-Boles metering machine.

Q. How were your offices—where were your offices located in 1953?

A. In 1953, they were in the Armstrong Building.

Q. In what city?

A. Houston, Texas.

Q. After the mail had been metered, what would be done with it?

A. It would be placed in bags, by mail clerks, and in our vehicle be transported to the post office.

Q. Now, did you ever use a messenger service, or any other means other than the use of the mails, to transmit your statements and accompanying invoices to your credit card customers?

A. No, we did not.

Q. All right, now, did you keep the records of the retail credit card purchases correctly and currently?

A. We kept them currently, and with a high degree of accuracy.

Q. As a part of your regular course of business, you make up, and prepare these invoices and statements?

A. That is correct.

Q. All right, sir. Now, how did you receive checks from credit card customers from outside the City of Houston?

A. From outside the City of Houston?

Q. Yes, sir. How were they delivered to you?

A. I am sure they came 100 per cent by mail.

Q. Now, what would be done with those checks from your credit card customers after they were received by mail in your office?

A. After comparing them against the billing, they would be built into our daily deposit.

Q. I will hand you what has been marked Government's Exhibit 90, and ask you if you can identify it?

A. This is a monthly statement dated March 20, 1953,

prepared in the name of the Benavides Independent School District, Benavides, Texas.

Q. All right, Can you tell from the face of this statement to what address the statement was mailed?

A. It was mailed to the Benavides Independent School District, in care of Oscar Carrillo, of Benavides, Texas.

Q. All right, sir. What is the yellow slip immediately after the first page of the exhibit?

A. This is a copy of the same statement, which customarily the customer would return to us with their check attached.

Q. All right. Now, what are the succeeding pages?

A. Those are invoices which had been prepared at the service station where the credit cards had been presented and purchases had been made.

Q. All right, now. Is it customary to send supporting invoices along with the statement to the credit card holders?

A. That is correct.

Q. I will hand you Government's Exhibit 91 and ask you if you can identify it?

A. This is a monthly statement dated April 24, 1953, prepared for the Benavides Independent School District, Benavides, Texas, same address.

Q. All right, sir. To whom was it mailed?

Mr. Foreman: What is that number?

Mr. Bottler: Exhibit 91.

A. This was mailed to the Benavides Independent School District, in care of Oscar Carrillo, Benavides, Texas.

Q. All right, and what is the yellow sheet?

A. It again is the copy of the monthly statement, which customarily would have been mailed back to us with the customer's check.

Q. What are the succeeding white pages?

A. Supporting invoices which had been made at the time of purchase.

Q. I will hand you what has been marked for identification as Government's Exhibit 92-A, and ask you if you can identify it?

A. It is the type of window-face envelope which we use for the mailing of monthly statements to the credit card holders. This bears the postmark June 1, 1953, and the imprint of our Pittman-Boles metering machine.

Q. How can you tell that it is yours?

A. The serial number is No. 170149. That was our machine.

Q. Would you look at Government's Exhibit 92-B, and I will ask if you can identify it?

A. It is a monthly statement prepared May 25, 1953 to the Benavides Independent School District, care of Oscar Carrillo, Benavides, Texas.

Q. And what is the yellow sheet following it?

A. It is the copy of the statement which customarily the customer would return to us with his payment.

Q. What are the succeeding white pages after the yellow sheet?

A. Invoices covering purchases made on the card.

Q. All right. Approximately how long after the billing date are the statements mailed out?

A. The average would be three to five days. There might be an added two days, if a week end intervened.

Q. All right, sir. I will hand you what has been marked for identification as Government's Exhibit 93, and ask you if you can identify it?

A. It is a monthly statement prepared June 25, 1953 for the Benavides Independent School District, care of Oscar Carrillo, Benavides, Texas.

Q. All right, and is this a statement of the Continental Oil Company?

A. It is.

Q. And what is the yellow sheet?

A. The yellow sheet is the copy of the same statement which the customer ordinarily would return to us with the check.

Mr. Foreman: May it please the Court, we have no objection to this evidence, but if there will be any other large number of months, it appears that one question could cover them, all the yellow sheets, as all those yellow sheets are one thing and all the white sheets another thing, and the others another, and in the interest of reducing the time of the witness on the stand, we think the questions should be asked as a group.

The Court: Is that given as a suggestion?

Mr. Foreman: Yes, Your Honor.

The Court: Well, I will pass the suggestion on to counsel. I will not require him to do it. I am not going to let either counsel on either side tell the other how to conduct their case, and it is passed along as a suggestion, and if you believe you can save time by it, I suggest it be followed.

Mr. Bottler: Your Honor, I am nearly through with this. There are some differences in this exhibit. What is the next page which appears as the yellow page?

A. Th next page is a federal tax exemption certificate which political subdivisions are permitted to execute in lieu of payment of the federal tax.

Mr. Foreman: Let me see that federal tax exemption certificate. I don't recall that.

Q. (By Mr. Bottler) Turn to the next page, the envelope which appears. What is that?

A. This is the type envelope which we placed in each monthly statement sent out to customers and bears our return address.

Q. All right, sir. What are the sheets which appear thereafter?

A. Those are invoices covering purchases made at the stations.

Q. Now, I will hand you Government's Exhibit 94-A, and ask you if you can identify it?

A. It is a window-face envelope of our company bearing the postmark August 3, 1953, and again the serial number of our metering machine.

Q. All right, sir. What is 94-B?

A. This is another of the return envelopes which would be mailed in each monthly satement.

Q. What is 94-C?

A. It is a federal tax exemption certificate.

Q. All right, and what would be done with it ordinarily?

A. It could be executed and returned to us in lieu of payment of the federal tax.

Q. Did you send these federal tax exemption certificates to the Benavides Independent School District, or did you send any?

A. We did.

Q. All right. And what are the following white—what is 94-D?

A. It is a monthly statement dated July 24, 1953, to the Benavides Independent School District, care of Oscar Carrillo, Benavides, Texas.

Q. To whom was it mailed?

A. Mailed to the same customer and address.

Q. All right. The yellow sheet is a duplicate statement?

A. Right.

Q. And the remaining white sheets are likewise supporting invoices?

A. They are.

Q. All right, sir. Thank you. I will hand you Government's Exhibit 95, and I will ask you if you can identify it?

A. This is the stub of a check printed for the Benavides Independent School District, Benavides, Texas, and bears their dating of March 31, 1953 and was in the amount of $353.02.

Q. What was done with the check which was attached to this voucher?

A. After endorsement, it would have been placed in our deposit and would be deposited in the Second National Bank or depository bank in Houston.

Q. All right, sir.

Mr. Foreman: May it please the Court, is this supposed to come from his records?

Mr. Bottler: Yes.

Mr. Foreman: Oh.

Q. (By Mr. Bottler) Now, did Government's Exhibit 95 come from your records in the marketing division of the Continental Oil Company?

A. Yes, it did.

Q. Now, I will hand you Government's Exhibit 96 and ask you to turn to the reverse side of it and tell us whether you can or cannot identify the stamp which appears on the back thereof?

A. This is the wording of the stamp which we used in endorsing our checks at that time.

Q. In what bank were those checks deposited?

A. The Second National Bank of Houston.

Q. I will hand you Government's Exhibit 90, being the statement for March 20, 1953, the Benavides Independent School District in care of Oscar Carrillo, and Government's Exhibit 91 being the statement of April 24, 1953, to the Benavides Independent School District in care of Oscar Carrillo and ask you if you can tell us how much money was paid on this account during the time beween those two statements?

A. The current portion of the March 20, 1953 statement in the amount of $353.02 had been paid before we prepared the April 24, 1953 statement.

Q. $352.02?

A. That is correct.

Q. And what is the amount shown on this attachment to the Benavides Independent School District check?

A. $353.02.

Mr. Bottler: All right, sir. No further questions.

Q. (By Mr. Foreman) Mr. Cramer, explain, please, sir—

The Court: Mr. Foreman, is this interrogation calculated to take long?

Mr. Foreman: It might, Your Honor.

The Court: More than 10 or 15 minutes?

Mr. Foreman: Perhaps.

The Court: I am going to suggest a recess at this time, then. Court will recess for 20 minutes.

(Short recess.)

The Court: Be seated, please.

Mr. Foreman: May it please the Court, the defendants and each of them move that the testimony of L. T. Cramer be limited in the consideration of the jury to Counts 17, 18 and 19, and they object to its being received as to any other counts.

Mr. Bottler: Your Honor, the Government offers this evidence on all counts not only to show the mailings which are alleged as part of the mailing counts of 17, 18 and 19, but also to show the scheme and artifice to defraud as charged in the indictment.

The Court: It relates generally to the expenditures of money, does it not?

Mr. Bottler: That is correct.

The Court: Yes. The motion will be overruled, and it will be received—may be considered as to all defendants and all counts.

Q. (By Mr. Foreman) Mr. Cramer, what is the specific title you hold at the Continental Oil Company?

A. At this time?

Q. Yes, sir.

A. Regional marketing accountant.

Q. What did you hold in the year of 1953, I believe from March through July? Those were the dates about which you testified, were they not?

A. That is correct. Assistant division accountant.

Q. And as to the division, were you limited to one division at that time?

A. At that time.

Q. And what did that division include, what sections of the United States or the State of Texas?

A. It included the Gulf Coast starting at the Mexican border, and would go on through Louisiana.

Q. And how far inland?

A. Oh, at given points, as much as perhaps 100 to 150 miles.

Q. All the way across from the Rio Grande to and including the State of Louisiana?

A. Yes, and even with some limited business in Mississippi.

Q. Do you have knowledge of the total number of the credit card accounts of the Continental Oil Company as of the year 1953, or approximately that number?

A. I would know fairly close how many were buying, but not how many were holders of cards.

Q. Active accounts, then, that were buying?

A. Approximately 20,000.

Q. Over what area other than Texas, Louisiana and Mississippi?

A. Those would reside in this same area.

Q. Then the 20,000 would have been in these states?

A. Correct.

Q. That was for the total, not just for the region over which you presided, but over all the Continental accounts?

A. It would be just that division, as it was set up at that time.

Q. Was there any other division?

A. Pardon?

Q. Was there a northern division, or other states? Does Continental operate generally in other states?

A. Yes, they do operate in other states.

Q. Are they handled out of here?

A. No.

Q. Only those that were handled out of Houston would aggregate 20,000?

A. That is correct.

Q. Was there any difference in the manner in which the Benavides Independent School District account was handled insofar as mailing the statements, receiving checks, as you have detailed with reference to Exhibits, Government's Exhibits 90 through 94-C, than they were with the other 19,999 accounts?

A. They were all handled the same way.

Q. Did you ever have any correspondence or any conversation with anyone of the defendants here, either Oscar Carrillo or George Parr, or any of the others, concerning how you were to, or what you were to do with refer-

ence to the accounts of the Benavides Independent School District?

A. I have had no such conversation.

Q. Insofar as you know, generally speaking, is there any difference in the manner in which Continental Oil Company handles its active credit card accounts, and the way other retail, other manufacturers of gas and oil, such as Gulf, Texas, Humble, Standard, and so forth, Phillips, handle their accounts with active credit card patrons?

A. We will have similar methods.

Q. They all use the mails, mailing statements, receiving checks, and so forth, is that correct, sir?

A. That is my understanding.

Q. And you know how long—has not this matter of sending out statements and receiving remittances prevailed so long as you know there has been a credit card for gasoline, back about 1930?

A. Yes.

Q. Mr. Cramer, do you have any independent knowledge concerning the Benavides Independent School District account other than as revealed by the exhibits offered here? Do you have any personal knowledge obtained otherwise than from examination of these exhibits, 90 through 94-C?

A. I don't handle the account.

Q. Did you ever handle it?

A. Never have handled it.

Q. Please explain to the jury what is a dealer and what is an agent, in the terminology of an oil company such as Continental.

A. An agent has charge of the bulk plant. The merchandise there is that of Continental Oil Company, and he acts as our agent for the distribution of our products

over an area. A dealer would be an operator of a service station. It could be company-owned, it could be independently owned.

Q. What agent handled the distribution of your products in Benavides in 1953?

A. I am sure that was in the Alice agency.

Q. Do you know his name?

A. Mark Williams.

Q. And do you know whether or not a man named Armando Caballero, Sr. or Jr., were dealers in Continental products in the City of Benavides in 1953?

A. I run into the name, but I can't say that.

Q. I said Armando. I meant Amador.

A. I couldn't say.

Q. Do you know where you ran into the name?

A. No, sir, I do not.

Q. Briefly, how long, please, from the time a customer at a filling station signs a—for the receipt of any product, the routine by which that signed receipt travels to reach your office? Is it mailed directly to the Continental Oil Company through the United States mails, or is it traded to your agent for company products and accepted by him as cash?

A. It would be picked up by our agent at the agency and could be applied against his purchase, and as a part of his report, would then be mailed to our office in Houston.

Q. Your first few words, "picked up by the agent at the agency"?

A. I am sorry. I should have said at the dealer's place of business.

Q. His filling station. Then one agent, or the agent at Alice would have in 1953 approximately how many dealers he was serving, in your best judgment?

A. I don't know. An average agency might have 10 to 20.

Q. All right. Then the dealer might contemplate that any such signed statement would eventually be transported through the United States mails from the agent to the regional office here in Houston?

A. I would think so.

Q. And likewise, how would you compensate the agent so as to reimburse him for the products he had delivered to the dealer? Was it by cash or in kind? Did you accept these signed credit card holders receipts for your products as cash to the wholesaler or agent?

A. We accepted them as cash and supported his report coming in to us.

Q. Do you likewise sometimes pay cash on receipt of such customer's receipts for your products?

A. Not coming through dealers.

Q. I am speaking of agents. That was a part of my question. Do you ever, instead of giving the agent merchandise, we will say gas and oil, do you sometimes pay the agent cash to reimburse him for the redemption of customer's receipts?

A. No, we only permit him to charge his deposit sufficiently to let the redeemed invoices balance it out.

Q. Charge his deposit? Did the agent carry an account for the company in a bank in his city where his agency was established?

A. That is correct.

Q. Then he would send through the mail deposit slips and show any such receipts as were not redeemed by merchandise as what you call a shortage of deposit?

A. The analysis of his cash report would—

Q. Sir?

A. The analysis of his cash report would reveal the amount of the deposit, the deposit slip would be attached, and then the further claim would be on the cash report for the amount of the retail invoices, which he would submit into the office.

Q. And all such dealings on transactions between the company and the agent were by mail?

A. That is correct.

Q. Did you have supervision or direction of any of that in 1953, between the Alice agent and the Continental offices here in Houston?

A. You mean supervision of his mailing?

Q. Yes, sir, or the acts of the agent so as to determine the correctness of any customer's slips?

A. I am sorry, I don't understand your question.

Q. Was the auditing of the agents under your supervision or direction in 1953?

A. The auditing was not.

Q. What was, insofar as Continental Oil and the agents were concerned, under your direction and supervision?

A. Through bulletins, we would keep our agents advised as to how we wanted them to handle our business in that agency.

Q. Then you had charge of general supervision of the preparation, direction, and dissemination of bulletins?

A. For the accounting end of it.

Q. Then, Mr. Cramer, what was the dealer authorized to charge to the company or send and obtain credit from his agent? What could he—in other words, suppose, in addition to running a filling station, he had a hardware store. Could he sell a kitchen stove and have it charged as gas and oil?

A. Have it charged as gas and oil?

Q. Was he authorized to take the total value of anything he might sell that he might have in his filling station, and instead of billing it as whatever it really was, was he authorized to show it as so many gallons of gas or so many quarts of oil?

A. He was not so authorized.

Q. Was it in violation of your instruction and directions for a dealer to do that?

A. It should have been.

Q. Now, please explain to us what the federal tax exempt certificate is that is attached as a part of these exhibits, how that operates, please, sir?

A. A customer who is a political subdivision is privileged to purchase without payment of the Federal Excise Tax, and while they are billed with it originally when the invoice is prepared, if they execute it, we accept the exemption certificate in lieu of that portion of the billing, and receive their check for the difference.

Q. Is there any tax on gasoline except the excise tax?

A. No.

Q. Then any tax that is shown, that 7 or 8 cents a gallon, would be the state excise tax. I think you nodded. I didn't get your words?

A. I understood your question—

Mr. Bottler: Your Honor, could we get straight as between which excise tax the witness is being asked, whether it is state, federal, or what?

Mr. Foreman: I was about to go to that as soon as I got an answer so that we may establish are there two excise taxes, a state excise tax and a federal excise tax?

A. There are.

Q. Explain to the jury the meaning of the word "excise"? Some of the laymen may not understand it, including myself sometimes.

A. I am not qualified to explain it.

Q. Is there any tax except the state and federel excise tax? That is the whole tax, isn't it?

A. That is my belief.

Q. All right, then, is the—all of the tax, both federal and state remitted to the subdivision of the government are only the federal or only the state?

A. The exemption certificate in the State of Texas can be taken only on the federal tax.

Q. Then if a dealer, contrary to your instructions or policy or established practice, does in truth charge tires, batteries, or other paraphanalia not sold or manufactured by Conoco and instead of charging it as that, charged it really or lists it as so many hundreds of gallons of gas or quarts of oil, what, if any punishment, or what is the practice of the company in connection therewith? What would you do if such an act or conduct was discovered?

A. If our credit department had any reason to question this particular invoice, they would charge it back and not accept it or run it through.

Q. Charge it back, in what way? They would charge it back to the agent, and in turn expect him to charge it back to the dealer?

A. Well, in this particular type of incident that you are referring to, they probably would charge it directly to the dealer. We would charge it only to the agent if we knew it was something that he might have detected.

Q. How did the Conoco go about charging it to the dealer? Did they send him a bill for it? Is there any ac-

count with the dealer directly with Conoco that does not clear through the agent?

A. Yes, there could be such an account.

Q. Do you know whether there was in 1953 with Amador Caballero, Sr. or Jr.?

A. I don't know.

Q. Then if such was done, that is the charging of merchandise other than Conoco products as gasoline or oil, and if a federal tax exempt certificate were issued to such a customer because of its being a political subdivision, in truth and in fact such a customer would receive more money in the federal tax exempt certificate than such customer would be entitled to, would he not, Mr. Cramer?

A. The customer would receive more money?

Q. That is assuming as a part of the question that a considerable item, several dollars or hundred dollars was of merchandise that was not in gas and oil, and therefore was not taxable, if it was charged as gasoline and in truth was something else, normally there would be a fraud on the government to the extent of the federal excise tax, would there not?

Mr. Bottler: Your Honor, we object. Of course obviously it is calling for a conclusion on the part of this witness as to something being a fraud against the government. We object to it as calling for a conclusion not within the province of this witness.

Mr. Foreman: I will rephrase it.

The Court: Very well, sir.

Q. (By Mr. Foreman) Mr. Cramer, let's take a hypo-

thetical case of, say, $150 worth of merchandise, tires, say a complete set of tires and a battery aggregating $150. Say it was charged, instead of being charged as tires and battery, the total amount was divided by the number of gallons of gas that would amount to, $150, and actually charged as gasoline. Would or not that $150 charged as gasoline, at the end of the month be included in the computation by which the federal tax exemption certificate was computed?

A. It would be included.

Q. And how much is the federal tax on gasoline?

A. I believe it is two cents.

Q. Then how does the federal tax exempt certificate eventually get translated into cash?

A. It would be vouchered from this office to our tax division in the general office, and there it would be used at some point to reduce the payment of our federal tax to the federal government.

Q. Well, how would the customer, the Benavides Independent School District, get its remuneration for the taxes already paid?

A. They would not be paying the tax. The taxes would be in the gross billing to them, but they would sign and return to us the exemption certificate, together with their check for a reduced amount to balance the statement.

Q. In other words, when you mailed out the statements in evidence here as Government's Exhibits 90, 91, 92, 93 and 94-A, the Benavides Independent School District would already be credited with the federal taxes on the entire bill?

A. Not until they made their payment.

Q. At any rate, they would be credited on the invoice

and they would only be required to pay the invoice less the tax credit you had given on the invoice?

A. Thy would pay the statement less the tax, and of course it is supported by the invoices.

Q. I should have said the statement. I am sorry.

Did you ever authorize Amador Caballero, either senior or junior, to sell any merchandise he might have in stock, even that not manufactured by Conoco, and instead of charging it as whatever it was, to carry it through your credit system as though it were so much gas and oil?

A. I did not.

Q. Do you know of the company's ever having authorized any dealer to do that?

A. I have no such knowledge.

Q. If it were done, would it not be contrary to the company policy?

A. It would.

Mr. Foreman: May I have the exhibits about which this witness was questioned?

(Exhibits tendered to counsel.)

You have no personal knowledge as to any of the transactions between Amador Caballero and the Benavides Independent School District except as revealed by your records here, about which you have testified, do you not sir?

A. That is correct.

Q. Do these exhibits reveal the dealers' names so as to make of record the identity of the dealer? Is there a place on each one of the white invoices, Mr. Cramer, for the dealer's name?

A. There is.

Q. What does the dealer's signature appear to be here? By here, I am referring to the first invoice slip in Government's Exhibit 93.

A. It is A. Caballero, Jr.

Q. Very well. Just hurriedly go through and see if there is any that doesn't have Caballero? We are not going to take them all, but just taking them at random all the way through. Are there any that you have seen as I thumb through it at random, Government's Exhibit 93, that did not have A. Caballero, Jr. on them?

A. There are none.

Q. Now, we are at Government's Exhibit 92-A, and again we are taking them at random without taking the time. Are there any in 92-A that did not have A. Caballero, Jr.?

A. There are none.

Q. Now we are at Government's Exhibit 90. I call your attention to the fact that there is no junior for your guidance. We will look through to see if there is any junior at all, or if it is just A. Caballero on 90. Do you see any on 90 that do not show A. Caballero?

A. I do not.

Q. And there was no junior on any of them, was there?

A. No.

Q. With reference to Government's Exhibit 91. Do you call these invoices, or what do you call these?

A. Invoices.

Q. Starting at invoice 232625, and going through the last one here is 232622, state whether or not they are all A. Caballero?

A. They are.

Q. Let's see if all from 232424 to the back are A. Caballero, Jr.? No, here is one that isn't. They are all, all except one of Government's Exhibit 91, are either A. Caballero, Jr. or Sr., are they not, sir?

A. Yes.

Q. And the last one is Arthur Reimers of San Antone, Texas?

A. I think here both the customer and the dealer have signed in reverse position possibly. I believe this might be the dealer's endorsement here, and this is the customer's signature, customarily.

Q. What is there as the customer's endorsement?

A. O. Carrillo, Sr.

Q. You don't mean you think Mr. O. Carrillo was a dealer, do you, Mr. Cramer?

A. That he was a dealer?

Q. You don't know whether he was or not? This appears to have been—the one that was over dealer's signature, Arthur—what is your best judgment? Is that R-e-i-m-e-a-s, or a P? What is your best judgment as to what that dealer's name is?

A. I would call it an R.

Q. Would you spell the rest of it now?

A. R-e-i-m-e-r-s.

Q. That will be as good as any.

A. It is quite likely I am mistaken about this having been reversed. That may be a purchase in San Antone.

Q. That is what it says down there, the dealer is in San Antonio, Texas. That charge we are asking about is 337705, April 9, 1953, for $3.50, isn't it?

A. That is correct.

Q. I didn't ask you about Government's Exhibit 94. We will run through it and see if all these endorsements are Caballero, and if there is any senior or if they are all junior. They are all junior, aren't they?

A. They are all junior.

Q. This check, or this picture of a check, did you produce that, or did you know where that—is that from your bank, a photostat?

A. I did not produce it.

Q. You don't know the source of it?

A. I do not.

Q. Did you produce this Government's Exhibit 95?

A. I did.

Q. And from what place?

A. From our files.

Q. That purports to be a portion of a check for $353.02, doesn't it?

A. It does.

Mr. Foreman: That is all, Your Honor.

4-1005 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Mr. Cramer, if a $21 battery was charged as gas by a dealer, would any federal excise tax be due, any federal excise tax be due on the sale of the battery?

A. I don't know.

Q. If such a transaction were discovered, did you say you would charge the dealer back with the amount of the purchase?

A. For improper invoicing?

Q. Yes.

A. We would charge it back.

Q. And what was the amount of the federal excise tax of 1953?

A. Pardon?

Q. What was the amount of the federal excise tax on gasoline?

A. It is presently two cents. I don't know the exact date it was brought to that rate.

Q. All right, sir. No further questions.

Mr. Foreman: Nothing more.

The Court: You may step down, sir.

4-1006 CURTIS W. REGNER,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

4-1006 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?

A. Curtis W. Regner.

Q. By whom are you employed?

A. Bank of the Southwest.

Q. And what was the name of the bank prior to becoming Bank of the Southwest, if any?

A. The Second National Bank.

Q. When was the bank name changed?

A. January 1955—1956.

Q. All right. What title or position do you hold with the Bank of the Southwest?

A. Manager of the proof transit division.

Q. Who has custody of the microfilm records of that division?

A. I do.

Q. Do you make a microfilm records of checks drawn on banks outside the City of Houston?

A. Yes, sir.

Q. Do you keep your records correctly?

A. Yes, sir.

Q. Do you keep them currently?

A. Yes, sir.

Q. Is it part of your regular course of business to keep such records?

A. Yes, it is.

Q. Do you have all of the records in the Bank of the Southwest of what was then known as the Second National Bank?

A. Yes, sir.

Q. Did you bring with you the microfilm record of your bank showing check No. 32552 of the Benavides Independent School District?

A. Yes, sir.

Q. I will hand you Government's Exhibit 96, and ask you if you can identify this photostat?

A. Yes, sir. That cleared our bank on April 8, 1953.

Q. Have you compared that with your microfilm record, this photostat copy?

A. Yes, I have.

Q. Is it a true and correct copy of the check which appears in your records, having cleared the bank on April 8, 1953?

A. Yes, sir.

Q. What was done with this check after it went through the Second National Bank?

A. It was drawn on a bank in the San Antone District, and I feel sure we sent it through the San Antone branch of the Federal Reserve Bank.

Mr. Bottler: All right. No further questions.

4-1008 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Regner, whom did you say you worked for?

A. The Bank of the Southwest.

Q. Is that all?

A. The National Association.

Q. That is the name of it?

A. Yes, sir, that is the name of it.

Q. That is a National Association of banks?

A. No, sir, that indicates that we are a national bank. We are one bank. We are not a branch bank of any kind.

Q. What does the association mean?

A. We are an association of national banks.

Q. You are an association of national banks?

A. That is correct.

Q. Then there are other banks besides the one over here on Travis?

A. Yes, sir.

Q. You are the only one, but the whole association is right there?

A. We are an association of all national banks like First National, and so forth. It is the same one.

Q. They are national association too?

A. They are a national bank, correct. So are we.

Q. What is the difference between you and other banks? Where does that National Association come in?

A. We are in the association along with the other national banks.

Q. Are you in association with other banks here?

A. Only by being a national bank.

Q. But you are the only one that has National Association in your name?

A. Yes, sir.

Q. Is that for clarity or confusion?

A. Well, it depends on how you look at it.

Q. All right. You didn't have anything to do with the naming?

A. No, sir.

Q. Now, Mr. Regner, is your name spelled R-e-g-n-e-r?

A. Yes, sir.

Q. And it is Curtis W.?

A. Correct.

Q. This exhibit that Mr. Bottler asked you about, No. 96, when is the last time you saw that before he handed it to you just then?

A. The last time.

Q. Yes, sir.

A. This morning.

Q. Where?

A. In his office.

Q. And before then, how long had it been since the last time you saw it?

A. Well, the time before, when I brought it up here. I forget the exact date. It was when I testified before relating to that check.

Q. Somtimes last fall in November?

A. I don't recall the date. It could have been November. I don't know the exact date.

Q. And from that day until coming here this morning when you were shown it in Mr. Bottler's office, you had never seen it?

A. From that day, no, sir.

Q. When you compared this with the microfilm records, you—explain to the jury what that comparison consisted of, what microfilm you compared it with.

A. I compared it with the film that this check was reproduced on at the time we cleared it through our bank.

Q. And how and when did you make that comparison, and where?

A. I made it in our bank—I don't know the exact date it was made, but it was made prior to the time I was supposed to come testify back in November.

Q. Then this is not the microfilm itself? This is a reproduction, a photostat of the microfilm?

A. That is correct.

Q. Where was this picture made? Did you make it?

A. No.

Q. Where was it made?

A. In the M&M Building by the Recordak people.

Q. Do all people in this area send their microfilm to that place to be developed?

A. I am sure they do if they use that process.

Q. When the pictures are read, this was filed—when was this made—approximately the date it was presented to the bank?

A. The photostat, no, sir. The film of the check was made at the time the check was deposited in our bank. The photostat was made from them in November last year.

Q. Were you present at the making?

A. No, sir, I wasn't present at the making.

Q. Now, Mr. Regner, you stated that all out of town checks were microfilmed. Were any other checks microfilmed?

A. Yes, sir.

Q. Were all check microfilmed?

A. All checks on out of town banks are microfilmed.

Q. Are checks on local bank microfilmed?

A. On some suburban banks.

Q. Suppose you get a check from the bank across the street, The Texas National or the City National, would that be microfilmed?

A. No, sir.

Q. Only those to be sent to some other bank for collection?

A. Yes, sir.

Q. And different banks have different policies, is that right?

A. Yes.

Q. Some photostat all and some only photostat such as are going to remote bank districts?

A. Clearing house banks. We don't photostat checks drawn on other clearing house banks.

Q. If the same bank belonged, these banks belong to the same clearing house, the chances are that such checks as might be drawn and given to one bank on the other bank that belonged to its clearing house would not normally be photostated?

A. That is right.

Q. What is a clearing house?

A. The clearing house is a designated place where banks go to settle the amount they pay for checks drawn on other banks.

Q. It is an agency set up by banks in a given area for clearing their business one with the other?

A. That is correct.

Q. Do you know where the clearing house is in Duval, Jim Wells County?

A. No, sir.

Mr. Foreman: I think that is all. Thank you, Mr. Regner.

4-1013 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Mr. Regner, did you bring that roll of microfilm with you today?

A. Yes, sir.

Q. Do you have it with you now?

A. Yes.

Q. And did you compare this Government's Exhibit 96 with the film shown on the microfilm you have in your hand?

A. I did.

Q. Did you bring another copy of that check with you today?

A. I did.

Q. Is it the same as this 96?

A. It is.

Q. And have you had custody of this photostat copy

of the check which you have just produced from your pocket since the time that these photostats were made from the microfilm?

A. This one was made recently.

Mr. Foreman: Your Honor, we are making no contention the microfilm and the check were not the same. We were asking these to show the assiduous efforts on the part of the prosecution.

Q. Do you microfilm records you intend to keep, or microfilm records you intend to destroy?

A. You intend to keep.

Mr. Bottler: No further questions.

Mr. Foreman: That is all, Mr. Regner.

The Court: Step down, please.

4-1014 AMADOR CABALLERO, SR.,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

4-1014 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?

A. My name is Amador Caballero, Sr.

Q. Where do you live?

A. I live in Benavides.

Q. Where were you born?

A. I was born in Benavides.

Q. In 1952, what business were you in?

A. I was in the service station business.

Q. And what kind of service station do you have?

A. I had a service station that I was handling Continental Oil Company products.

Q. Are you personally still operating that station?

A. No, sir.

Q. When did you leave it?

A. I leave that place of business in March of 1953.

Q. Who took over at your service station after you left?

A. My son, Amador Caballero, Jr.

Q. Had he been working for you or not prior to the time he took it over in March of 1953?

A. He was working for me prior to that date.

Q. Do you know Oscar Carrillo?

A. Yes, sir.

Q. Do you see him here?

A. Yes, sir.

Q. Where is he?

A. He is the one on the righthand side over here.

Q. Have you ever sold any Continental products to Oscar Carrillo, Sr.?

A. Yes, sir.

Q. What did you sell him, what Continental Oil Company products?

A. Gasoline and oil.

Q. To whom was the gasoline and oil charged?

A. It was charged to the Continental Oil Company account.

Q. And whose account was it?

A. It was to the Benavides Independent School District.

Q. Did you sell gas to Oscar Carrillo on his credit card frequently or infrequently?

A. Oh, I can say frequently.

Q. And what vehicle or car did you put it in usually?

A. In his personal car.

Q. Did you ever see any gasoline to a person named Beto Segura?

A. Beto Segura, yes, sir.

Q. Who is Beto Segura?

A. Beto Segura is a boy that lived around Benavides there, or in Benavides.

Q. What kind of work does he do?

A. He is a ranch hand.

Mr. Foreman: May it please the Court, we object to this testimony as to all defendants except Oscar Carrillo, and ask that it be limited to him only.

Mr. Bottler: Your Honor, we will offer this as against all defendants.

The Court: How is it justified against all defendants?

Mr. Bottler: It is alleged as part of the general scheme that the defendants did obtain materials and charged them to the Benavides Independent School District, and the Benavides Independent School District would pay for the materials and supplies obtained by the defendants, relatives, friends and associates.

The Court: Very well. It will be so received.

Mr. Foreman: Do I understand the Court that it is offered generally as to all defendants and all counts, and no limitation whatever on it?

The Court: Yes, sir.

Q. (By Mr. Bottler) You say he was a ranch hand?
A. Yes, sir.
Q. Do you know for whom he was working in 1953?
A. He was working for Oscar Carrillo.
Q. All right, and in what vehicle did you, or car or truck or whatever it was, did you place the gasoline when Beto Segura got gas there at your station?
A. It was—we called that an army vehicle.
Q. An army vehicle?
A. Yes, truck.
Q. Whose was it?
A. It was supposed to have been to Oscar Carrillo.

Mr. Foreman: Your Honor, I object to that testimony, supposed to have been Oscar Carrillo's, as a conclusion. Either he knows, or he doesn't.

The Court: Objection sustained, and the jury will not consider the statement of the witness that it was supposed to belong to Oscar Carrillo.

Q. (By Mr. Bottler) Do you know who it belonged to?
A. All I know is that like I said while ago, I never did see the certificate of title or something like that. I know it was supposed to have been his truck.

Mr. Foreman: Continued objection.

The Court: Yes. The objection is again sustained, and the jury is again instructed not to consider the statement.

Q. (By Mr. Bottler) Have you ever seen Oscar Carrillo in the vehicle?

A. No, sir.

Q. All right. Have you ever had any discussion with Oscar Carrillo about that army truck or Beto Segura?

A. Oscar Carrillo ordered me to give Beto Segura gasoline on that truck.

Q. Who was it to be charged to?

A. It was charged to the Benavides Independent School District.

Mr. Foreman: Leading and suggestive in that the witness has not yet stated who he told him to charge it to. He has suggested who it was to be charged to.

The Court: The question is who it was charged to. It might be in order to first prove it was charged. I don't believe the question itself is leading. It may be premature. It may be necessary to prove first it was charged.

Mr. Foreman: The phraseology of the question was to whom was it to be charged.

The Court: I suggest you rephrase your question.

Q. (By Mr. Bottler) All right, Your Honor. Did you ever at any time, when Oscar told you about Beto Segura purchasing gasoline—what, if anything, was said about who was to pay for it, or to whom it was to be charged?

A. Oscar Carrillo told me to charge it on the Bena-

vides Independent School District credit courtesy card.

Q. Do you know Lorenzo Bazan?

A. Yes, sir, I do.

Q. And who is he?

A. Lorenzo Bazan is a boy that lives around Benavides there.

Q. Have you ever sold any—

The Court: What is the name, please?

A. B-a-z-a-n.

The Court: Thank you.

Q. Have you ever sold any gasoline and oil to Lorenzo Bazan?

A. I did, sir.

Q. And in whose vehicle or truck or car was Lorenzo Bazan in at the time you sold him the gasoline and oil?

A. It was this particular same vehicle, an army truck.

Q. All right. Did you write up the tickets for the purchase of gas and oil by Oscar Carrillo, Beto Segura and Lorenzo Bazan? Did you write up the tickets on that credit card?

A. I wrote all the tickets, yes, sir.

Q. On what credit card?

A. On the Benavides Independent School District courtesy card.

Q. And did you turn those tickets in?

A. I turned those tickets in every time that I purchased gasoline.

Q. Now, what was Lorenzo Bazan doing in late 1952 and early 1953, if you know?

A. All I know is that he was working for Oscar temporarily, I can say.

Q. Now, did you ever sell anything other than gas and oil to Oscar Carrillo?

A. I did.

Q. What did you sell?

A. I sold some tires and tubes.

Q. And to whom was it — were the tires and tubes charged?

A. They were charged to the Benavides Independent School District on an open account.

Q. All right, and were you paid on that open account?

A. Yes, sir.

Q. And who paid you?

A. By a check by Oscar.

Q. And whose check was it?

A. The Benavides Independent School District.

Q. Do you know where Lorenzo Bazan was working for Oscar?

A. At the time, he was working for Oscar.

Q. But where? Where was he doing the work, do you know?

A. Like I said, he was supposed to have been working at the ranch.

Mr. Foreman: We object to any—

The Court: Supposition?

Mr. Foreman: Conjecture or supposition.

The Court: The object is sustained, and the jury is instructed not to consider the answer.

Q. Are you a supporter of the Freedom Party?

A. Yes, sir.

Mr. Bottler: No further questions.

Q. (By Mr. Foreman) How active do you support them, Mr. Caballero, Sr.?

A. Well, I can say I am an active member of the Freedom Party.

Q. And how active?

A. I don't go to the full extent. I have to attend to my business.

Q. You support them with your money?

A. I don't have any money to invest in politics.

Q. You support them with your time and your suffrage, do you not?

A. I put in a little time, all right, but not lots of time.

Q. And you support them with your intercession with your friends to vote Freedom Party, do you not, sir?

A. At times I do.

Q. And do you attend their rallies?

A. Oh, yes, sure. Sometimes, not all.

Q. You applaud and hurrah when the speakers speak on the Freedom Party ticket?

A. I am not a speaker myself, and I don't talk very much.

Q. I wasn't asking about the speaking, I was asking about the cheering section. As a matter of fact, you are one of the most ardent, active, animated members of the Freedom Party in all of the 79th District around you, Mr. Amador Caballero, Sr.?

A. I wouldn't know that.

Q. Do you know anyone, that is except Donato Serra and Richard Barton, that are any more vehement in their political partisanship than Amador Cabellero, Sr.?

A. I think I do know a bunch of them that do a lot more than I do.

Q. Do you know any of them that are any more faithful in their attendance, in their dedication to the advancement of the interests of the Freedom Party and the degradation of the Parr or Old Party than Amador Caballero, Sr.? Do you?

Mr. Bottler: Your Honor, I believe the question is duplicitas.

Mr. Foreman: I think so too. I will rephrase it. I will first take the positive view of it.

Do you know, Mr. Amador Caballero, Sr., of any person any more consecrated politically to the Freedom Party than you yourself?

A. Yes, I do know several others.

Q. How many could you say, without naming?

A. Oh, I can say probably seven or eight or ten.

Q. Okay. Who would be within the first twelve disciples of that party in Duval County?

A. Those twelve do a lot more than I do.

Q. And that would be about how many, numerically, do you count in the fold of the Freedom aggregation, Mr. Amador Caballero, Sr.?

A. Numerically, I can't say just how many. There is quite a few.

Q. Would you say there are several hundred?

A. I don't think so.

Q. Well, you know almost to the last exemption or poll tax, don't you, exactly how everybody votes there, whether they vote Freedom or Old Party or, now, Dan Tobin?

A. I don't know exactly. No party knows.

Q. You know down to about 1/100ths of one per cent,

don't you, in Duval County how everybody lines up politically?

A. No, I don't know that close.

Q. Nobody has any doubt how you stand?

A. Nobody doubts how I am standing.

Q. Isn't the principal plank of the Freedom Party to destroy George Parr and his lads?

A. Ask me that question again, sir.

Q. Is or not the principal plank of the Freedom Party to destroy George Parr and his lads?

A. I don't think that is the idea of the Freedom Party.

Q. Well, is it your idea?

A. My idea is this: I believe in the Constitution of the United States.

Q. Yes.

A. And we do not want to destroy anybody. We are Democrats.

Q. Are you for or against George Parr?

A. Politically, I am against George Parr.

Q. Are you for him now personally or in any other fashion? Aren't you diametrically opposed to him, and everything you think he stands for?

A. Personally, I am not opposed against him.

Q. Do you want—if what you have testified to was to be considered for or against the Old Party, would you like to have it considered for them or against them?

A. I didn't get your question very good.

Q. Are you attempting here today to help the Parr Party, the Old Party that is, or otherwise?

A. You mean by me being over here testifying?

Q. Yes, that is exactly what I mean.

A. In this courtroom here, I am not over here on politics. I am coming over here to testify on the testimony of the case, and that is all.

Q. Good. Now, will you tell us what relation you are to one Richard Barton?

A. Richard Barton is my brother-in-law.

Q. Did you convert him to the Freedom Party, or did he convert you?

A. Nobody did convert anybody one way or the other.

Q. Was or not Richard Barton originally an Old or Parr Party man?

A. Originally, we were all, every one of us, were Old Party men.

Q. Which one of you went to the Freedom Party first, you or Richard?

A. Richard went first.

Q. And when was that?

A. I don't know.

Q. What year, about?

A. I don't know just when it was.

Q. Could you tell us whether it was in or after 1952?

A. It had to be after 1952.

Q. All right, was it in 1953 or 1954?

A. I don't remember that exactly.

Q. How long was Richard Barton a member of the Benavides Independent School District Board of Trustees?

A. I don't know how long he was a member of the school system.

Q. Were you ever a member of that Board of Trustees?

A. No, sir.

Q. Were you a member of any of the indicting grand juries in Duval County?

A. No, sir.

Q. Mr. Caballero, has Richard Barton ever been indicted for anything?

Mr. Bottler: Your Honor, I believe that the records would be the best evidence of who was indicted for what in Duval County.

Mr. Foreman: I will withdraw it because Barton has already testified to it.

Mr. Caballero, have you attended Freedom Party rallies at the Vaello Lumber Company?

A. Some of them.

Q. You didn't attend all of them?

A. No, sir.

Q. Have you run for office on the Freedom Party ticket?

A. Yes, sir.

Q. Do you recall any election at which you have not been a candidate on the ticket of the Freedom Party since you became a Freedom Party man?

A. Well, I have been running on the county schools and the city.

Q. Running on all of them?

A. Yes.

Q. If there is any place where there is a vacancy on the ticket, you are the man to man it?

A. I felt I wanted to run, and let the people decide.

Q. Have you ever been elected to anything?

A. No, sir.

Q. Mr. Caballero, would you say that your reputation for truth and veracity in that community is good or bad?

A. I let the community say that. I am not going to say it myself.

Q. They have said it several times at the polls?

Mr. Bottler: Your Honor, that is obviously an improper question, to attribute to being defeated at the polls.

The Court: You mean because he was defeated at the polls, that is the inference?

Mr. Foreman: I want to ask him if he didn't run on his integrity and reputation, and then I will ask the question. I will withdraw.

The Court: You may ask him these questions as to facts, and let the jury draw any inferences they wish to.

Q. (By Mr. Foreman) Did you run on your reputation for probity and veracity and integrity each time you offered for office? Was your platform your reputation for probity, veracity and integrity, or not?

Mr. Bottler: Your Honor, we would like to have this question broken down with the probity and other things in more simple English language. Mr. Foreman's questions are not too easily understood.

Q. Do you understand my questions? I will rephrase if you do not.

A. I understand your question, yes.

Q. You understand what probity means? You know what veracity means, and you know what—or do you know what integrity is?

A. I fully understand you.

Q. All right, sir. With that established, did you or not, each of the many and repeated times you have offered for office in the Benavides community where you have lived since you were born, run on your reputation for probity and integrity and veracity? Did you or not?

A. I want to answer that question. Of course, I can adhere to it a little bit, if Your Honor will permit.

The Court: You may.

A. I hate to bring politics in this case over here due to the fact that this is not a political ball over here, and I have been running, like you said, on my own record. When you are fighting a political machine, like we have had in Duval County there, any person that will get almost one-half of the votes there has to be a good man. Does that answer your question?

Q. Your answer is—

The Court: I will suggest recess at this time. Court will recess until 1:45.

5-1031 AFTERNOON SESSION—MAY 14, 1957

AMADOR CABALLERO, SR.,

being the witness who was on the stand at the time court recessed for lunch, resumed the stand at this time, and continued his testimony as follows:

5-1031 CROSS EXAMINATION (CONTINUED)

Q. (By Mr. Foreman) Mr. Caballero, when did you run for trustee of the Benavides Independent School District?

A. I think it was 1956.

Q. On the Freedom Party ticket?

A. I run, and the Freedom Party backed me up.

Q. You were defeated?

A. I was defeated, yes.

Q. When did you run for city commissioner of the City of Benavides?

A. This last April.

Q. Last April? Does that mean last month or a year ago?

A. No, last month.

Q. Last month. Was it about six or seven weeks ago, or eight, or was it twelve months ago?

A. No, it was this last April, last month.

Q. And you were defeated?

A. I was defeated with a few votes ahead.

Q. When did you run for county clerk of Duval County?

A. That was in 1956.

Q. And you were defeated?

A. I was defeated with 87 votes only.

Q. You ran on the Freedom Party ticket each time?

A. They were backing me up, yes.

Q. And is or not the Freedom Party a political group that puts out candidates for all offices on each election?

A. Well, anybody that wants to run will run.

Q. They agree on and back one candidate for each position, do they not, sir?

A. That is usually the way it goes.

Q. And you were the one they backed each time to run?

A. That is right.

Q. Did you select yourself, or did they select you?

A. I selected myself to run.

Q. Then, as a matter of fact, you have a downtown building in which the Freedom Party holds rallies, do you not, sir?

A. I will say no.

Q. Well, do you have a downtown building?

A. I have a downtown building, and we only had one rally over there, quite a few years ago.

Q. You what?

A. That is the Freedom Party. We have had one.

Q. Does the Freedom Party have leaders?

A. Well, I say there are no leaders. There is a committee that will discuss things, things like that.

Q. There is a committee that directs the activities and policies of its members?

A. That is right.

Q. Is that called the Executive Committee?

A. It is called the Executive Committee.

Q. Do they hold meetings to nominate candidates for the various elections when elections are held for the various offices?

A. That is the way they usually do.

Q. Are you on that committee?

A. No, sir.

Q. Who is?

A. I think it is Robert Leo, is one of them.

Q. Robert Leo, all right, sir.

A. I think the other one is John Rutlidge.

Q. Is who, please?

A. John Rutlidge, if I am not mistaken.

Q. John Rutlidge, and who else? Is John Rutlidge District Attorney Burris' brother-in-law?

A. He is.

Q. Go ahead. Is he on the grand jury also?

A. Is he on the grand jury?

Q. Was he on the grand jury with Cuahdemoc Cuellar, the Broadfoot grand jury?

A. That I wouldn't know.

Mr. Bottler: I believe we are getting pretty far afield, in the interest of time, whether or not John Rutlidge was on some grand jury. That is immaterial to this case.

Mr. Foreman: May it please the Court, the district attorney opened up the Freedom Party activities, and I am attempt to show the jury what he opened up from this witness.

The Court: There has been no objection to Freedom Party activities. I think the objection is, you are now identifying somebody as being on the grand jury. What is the relevancy of that?

Mr. Foreman: We contend that is the principal place the Freedom Party is active, Your Honor, in Duval County.

The Court: Well, I will permit the interrogation. I just wondered how far we were going.

Mr. Foreman: Not very much.

The Court: The operation of a political party may go on and on, in this district and that.

Mr. Foreman: I will try to confine it to the grand jury room, his store, and Joe Vaello's Lumber Yard, Your Honor.

The Court: Very well, sir.

Q. (By Mr. Foreman) Do you know who the members of the Executive Committee are?
A. I don't remember them.
Q. Is Donato Serna on that?

A. I don't remember.

Q. Is Richard Barton on that?

A. I don't think so.

Q. Are they all from Benavides, or all from Duval County, or are they from other counties, say Jim Wells, this Executive Committee?

A. There is supposed to be one from each commissioner's precinct.

Q. In Duval County?

A. In Duval County, yes.

Q. That is the Freedom Party Executive Committee?

A. That Executive Committee.

Q. Is there another Freedom Party Executive Committee for the district embracing Jim Wells County?

A. No, sir.

Q. You don't know anything about the Freedom Party activities in Jim Wells?

A. No, sir.

Q. Mr. Caballero, did you or not last November, to another jury hearing testimony, testify in the former trial of this case denying being a Freedom Party member?

A. I don't—at that time, I told you you could call me Freedom Party or anything.

Q. Did you not say you were not Freedom, you were independent, but I could call you Freedom or anything?

A. Oh, I have got to be Freedom Party after that completely.

Q. Regardless of that or after that, did you or not tell another jury, under oath, you were not a Freedom Party member?

A. At that time, I was not Freedom Party one hundred per cent.

Q. You were just—

A. A common independent.

Q. Sir?

A. Just an independent, as I said at that time.

Q. But you are now completely baptized and saved, as far as the Freedom Party?

A. Baptized or not baptized, I am saying I am Freedom Party.

Q. With reference to the political affiliations of these defendants, are they Freedom Party members, any of them?

A. Not that I know of.

Q. Is there any one of them that you don't know to be not only an Old Party member, but active in the Old Party politics of Duval County?

A. I didn't quite get your question.

Q. Aren't these individuals on trial here, except Mr. Donald who lives in Jim Wells County, all active leaders and workers in the Old Party, sometimes called the Parr Party, in Duval County?

A. Well, I think they are. all.

Q. Don't you know they are, Mr. Caballero?

A. I know they are.

Q. And do you know any leader in the Parr Party that has not been indicted from one to 104 times?

Mr. Bottler: Your Honor, we object. It calls for a conclusion. The record would be the best evidence. It is immaterial to any issue in this case.

The Court: Objection sustained.

Q. (By Mr. Foreman) You stated you had not been on a grand jury. Have you helped select a grand jury in Duval County?

A. I was on the jury committee, yes, sir.

Q. When?

A. I don't remember the date, exactly. It has been about a year ago or so.

Q. Was it the Broadfoot grand jury?

A. No, sir.

Q. The grand jury you selected had on it Frank Vaello, Jr.?

A. Yes, it had Frank Vaello, Jr.

Q. What relation is he to you?

A. He is not exactly Frank Vaello, Jr. It is Frank A. Vaello.

Q. Is he your son-in-law?

A. He is my son-in-law.

Q. Did it have Frank Barton?

A. I don't think so. I don't remember.

Q. You don't know whether it did or not?

A. I don't remember.

Q. Is Frank Barton your nephew, and Richard Barton's nephew?

A. That is correct.

Q. Did you marry Richard Barton's sister, and did he marry yours?

A. I married Richard Barton's sister.

Q. Did the grand jury you selected have on it Fernando Caballero?

A. It had a Fernando Caballero.

Q. Is he a nephew of yours?

A. He is my nephew.

Q. Is he also married to a Barton girl?

A. That is correct.

Q. Did the grand jury you selected have on it Romero Caballero, your brother?

Mr. Bottler: Your Honor, we fail to see any relevancy in the membership of the Duval County grand jury selected a year or so ago to the issues in this case, a Federal indictment of mail fraud. We object on the grounds of relevancy and, on the grounds of time.

Mr. Foreman: I want to establish, may it please the Court, they were selected for their party affiliations, and returned 104 indictments against these defendants.

The Court: You may proceed.

Q. (By Mr. Foreman) Was Romero Caballero on that grand jury?

A. Yes, sir.

Q. Is he your brother?

A. He is my brother.

Q. Do you know how many indictments that grand jury you selected returned against each of these defendants?

Mr. Bottler: Your Honor, the official records of the grand jury would be the best evidence of this, not this man's conclusions. We suggest that the best evidence be offered to—if it is material at all, and we do not see its materiality.

The Court: I agree but this witness has been asked if he knows, and I will let him answer the question.

Q. Do you know, sir?

A. I don't know how many indictments they returned.

Q. Do you know that, regardless of the 104, they returned a great, great many against each of them?

A. I know they returned some. I don't know how many there were.

Q. Did you help them do it?

A. No, sir.

Q. Mr. Caballero, would you like to see these defendants convicted?

A. No, sir.

Q. You would not?

A. No, sir. If they are not guilty, I do not want them to be convicted.

Q. You don't think it would help you be elected to any of the offices you might run for if they were eliminated, your political opponents?

A. That is out of the question here. As for myself, I run for myself on the voting thing. I don't want any of them to be convicted. That is not my duty.

Q. Did any of these men support you when you ran for office?

A. I do not know.

Q. Did they not actively oppose you, and haul people to the polls, some of them, to vote against you?

A. I couldn't tell you whether they did or not.

Q. Please tell the jury where Oscar Carrillo was at the time you claim he told you to charge one gallon of gas for his truck to the Benavides Independent School District? Where did that conversation take place?

A. It happened right at my station, the very first date it happened, right at my station.

Q. When was that?

A. Oh, I couldn't remember the date.

Q. Was it 1940, 1950, 1930—

A. It couldn't be 1940. I don't remember the date.

Q. As a matter of fact, you originally rented the station, didn't you?

A. When did I officially rent it?

Q. Didn't you first rent the station when you went to work in the filling station business?

A. When I first went into business in the service station, I did rent the station.

Q. Did you not later buy the station?

A. Yes, sir, I bought the station.

Q. And then, meanwhile, did you not later buy several other pieces of downtown property?

A. Yes, sir, and I still owe a bunch of money on them too.

Q. Mr. Caballero, did you ever sign people's names to tickets as customers; that is, did you ever sign both the customer's name and your name showing the customer to have received gas and oil?

A. I have done that several times with different customers, including with Oscar Carrillo. He, several times, told me to sign the name for him.

Q. You quite frequently did it when there wasn't any gas delivered, didn't you?

A. For every one of these items that are here that I have sold, that I was investigated for, every one of them I sold the gasoline. I never did overcharge a penny.

Q. Then you were investigated for signing customer's receipts to tickets for which gasoline was not delivered?

A. I was investigated only those tickets only I have sold.

Q. Mr. Caballero, about how often during the course of a day did you normally sign somebody else's name to a ticket as having received gas and oil, in the course of your conduct of your filling station?

A. That depends. Sometimes a day we have three or four

different customers, regardless of who they are, and they say, "Sign my name." We will never know how many.

Q. Does it average three or four a day you would sign as dealer and as receiving gas and oil?

A. I couldn't tell you.

Q. As a matter of fact, over half of your tickets were signed that way, weren't they?

A. Quite a few, I know.

Q. Wouldn't you say over half of the tickets that passed through your station were signed by you both as dealer and as the purchaser?

A. I wouldn't say that.

Q. Well, could you estimate, your best judgment, how many of each were done?

A. I don't have the least idea.

Q. When did you open your station?

A. I don't remember the date exactly.

Q. Well, without exactly, will you approximate it as to year?

A. I can't think of the year exactly. I started in business way back in 1938. That is really when I started in business.

Q. In the filling station?

A. In the filling station.

Q. At the same place?

A. No, different places. I have been moving from one to the other.

Q. And you moved more than one time?

A. Yes, sir.

Q. Several times?

A. Several times.

Q. Well, with reference to your Conoco station, were you always a Conoco dealer?

A. No, sir.

Q. The Conoco station that now Amador, Jr. operates, that you, Senior, formerly operated, do you recall about when you started that?

A. I can't tell you the year. I remember that it caught me right at the rationing time. Whether it was in 1941, 1942, or 1943, I don't remember the date.

Q. Assuming it was 1941, would that have been the time, or 1942?

A. If it was 1941 it was 1941. I remember it caught me right at the time when I moved into that place.

Q. Tell us with reference to when you opened the station, did Oscar Carrillo give you those instructions regarding charging gasoline for his trucks to the Benavides Independent School District? Was it shortly after you opened your station?

A. No, it wasn't shortly.

Q. How long?

A. At that time I was in another place, and then I move over to this one, and when Oscar came over to me, I was already over in the other one.

Q. By the other one, do you mean—

A. The one my son is working.

Q. So we may get that, does it have a street name or number?

A. No, they are both on the highway.

Q. Well, the one now, we will call it the present station, was it about the time you moved there that Oscar told you to charge gasoline to the Benavides Independent School District?

A. No, it was after that.

Q. How long?

A. I couldn't tell you just how long.

Q. Can you tell me approximately?

A. I believe it was about 1949.

Q. 1949?

A. Yes.

Q. Who was present?

A. I don't know.

Q. You don't recall anyone except yourself having heard that—

A. We were by ourselves.

Q. And it was at the station?

A. It was at the station.

Q. Was his truck there then?

A. No, sir, the truck wasn't there.

Q. And will you tell us his exact words, Mr. Caballero?

A. The exact words what? That Oscar used to tell me?

Q. Yes, exactly.

A. He said a man was going to come over in an army truck, to let him have the gasoline, that he needed it.

Q. He said a man?

A. A man named Beto Segura.

Q. He said a man named Beto Segura is coming over, let him have the gas, and charge it to the Benavides Independent School District?

A. That is what he said.

Q. How long have you known Beto Segura?

A. Oh, a lifetime.

Q. Yet, notwithstanding that, he said a man by the name of Beto Segura is going to come over here, just as though you had never heard or knew anything about Beto Segura?

A. He ordered not only Beto Segura come. Sometime he say "So-and-so come over," and they come over. He usually mentioned.

Q. Did it strike you as unusual Oscar Carrillo would refer to a man you had known all your life, and presumably that he knew, by the indefinite reference to a man by the name of Beto Segura is going to come over here? Didn't that seem rather odd to you he would use language like that?

A. It wasn't odd, no, sir,

Q. Now, when you said that Mr. Carrillo had gasoline put in his personal car, you used the expression "personal car," yourself, didn't you?

A. Yes, sir.

Q. That was not words injected into the question by Mr. Bottler, but he asked—when Mr. Bottler asked you what car did you put the gas in, you said his personal car, didn't you? Didn't you?

A. I answer that way, yes, sir.

Q. Did you mean to imply or emphasize that it was for his personal use, Mr.—

A. I knew that that was his car, and I meant to say that that was his car.

Q. Tell the jury how you would distinguish, if you can, between Oscar Carrillo's personal car and any other car he might have had for the transaction of the Benavides Independent School District business. Did he have a car labeled "Benavides Independent School District," or did he use what you refer to as his personal car in the school business?

A. He used to drive his personal car, come up there and get the gasoline.

Q. Well, did he have any car except his personal car that you know of?

A. I don't know.

Q. Well, did anybody have a car with Benavides Independent School District marked on it, either the principal,

any of the members of the trustees, the tax assessor or collector, the secretary, did anybody have any car in connection with or use any car in connection with the Benavides Independent School District business except his personal car?

A. The question was directed as to him, and that is they way I answer it. When he come in there, he got the gasoline and that is all.

Q. But nobody asked you about his personal car. You put the adjective "personal" on the car yourself. Will you explain how you happened to use that adjective otherwise than to say in his car?

A. Because the times he used to drive up there, it was in his car only. I never recall he used other cars, if there was a station wagon that belonged to School District. If there was, he never did drive up in it.

Q. You say "if there was one."

A. I say "if there was one," and I think there was one.

Q. Who drove the station wagon, if there was one, that you think belonged to the school district, if it did so belong? Who drove it?

A. The bus driver sometimes come up there in it.

Q. Both drivers?

A. Bus drivers. School bus drivers.

Q. By the School District car, you mean the School District busses?

A. Busses are one thing, and I am saying about a station wagon they used to have at that time.

Q. What color was it and what make was it, and when did they have it?

A. I don't remember the brand and color of it. It was just a station wagon they used to have.

Q. Do you know when they had it? Do you know whether they had one or not?

A. They had one, sur.

Q. You don't know what year?

A. I don't remember the year.

Q. Do you know whether or not Oscar Carrillo's car was used in connection with—his personal car, the one you are talking about, was used by him in connection with School District business?

A. I wouldn't know whether there was.

Q. You do not know whether there was.

you put in his car was used in connection with Benavides Independent School District business or not?

A. I don't know.

Q. And you don't know what the agreement, custom, practice, resolutions or action on the part of the school board was taken with reference to the use of cars in connection with school business?

A. I don't know, sir.

Q. Well, now, weren't the cars used for the purpose of transporting athletes, that is private cars, to and from games, football, basketball, baseball and track meets? Were they or not?

A. There were some of them, sure. They used to send some over there to go out to certain games.

Q. Weren't personal cars used in connection with taking the school census?

A. That is right.

Q. And weren't they used in connection with going to and from the bank, and to and from the county court house in connection with school district banking and tax matters?

A. Well, probably so. We never did go into it that far. The only thing is three or four cars come over going out on a game, and that is when we know they are going out on the game. Outside of the others, we didn't discuss anything.

Q. Weren't cars used by the athletic coaches in scouting other games in the area that the team would play in the future, that the team themselves did not go?

A. That is right.

Q. As a matter of fact, Oscar Carrillo had a charge account of his own, separate from the Benavides Independent School District, had a courtesy card with Conoco, did he not?

A. No, sir, he did not have a courtesy card.

Q. Are you sure of that?

A. I am pretty sure of it. He never did use it.

Q. Do you know whether or not he bought gasoline at other filling stations besides yours?

A. I do not know.

Q. Do you know whether or not this station wagon you are talking about was one owned before 1946 by the homemakng class, a Chevrolet station wagon that was wrecked in that year by the homemaking teacher?

A. I do not recall.

Q. You do not know whether that is true or not. Now Mr. Caballero, did you, as the operation of the Conoco station, sell other merchandise such as tires and batteries, and put it down on the ticket as so much gasoline aggregating whatever would be necessary to reach or equal the price of the tires or batteries?

A. I never did do that.

Q. Was it done at your station?

A. During the time I was there, it wasn't done.

Q. Was it done, to your knowledge, after you left there?

A. I don't know. I wasn't there. I haven't been there.

Q. Sir?

A. I don't know. I didn't go back to the station.

Q. You have had no connection with the station since Amador, Jr. operated it?

A. No, sir.

Mr. Foreman: That is all from this witness, Your Honor.

5-1053-A REDIRECT EXAMINATION

Q. (By Mr. Bottler) Did you ever hear of Oscar Carrillo being a football scout?

A. No, sir.

Q. Do you remember Oscar Carrillo, Sr. taking athletes to any games?

A. No, sir.

Q. Has your political activity affected your testimony in this case? Other than the questions that were asked you about your political activity—

Mr. Foreman: We ask that he be permitted to answer the question as asked.

The Court: Very well, sir.

A. Give me the question again.

Mr. Foreman: May the little lady read it back to him, the question as originally asked?

The Official Reporter (Reading): "Has your political activity affected your testimony in this case? Other than the questions that were asked you about your political activity—"

The Court: No, I believe what Mr. Foreman wanted answered was as originally asked, "Has your political activity affected your testimony in this case." Isn't that what you wanted?

Mr. Foreman: Yes, Your Honor.

A. I don't know whether it has or not.

Q. Well, have you testified about anything other than questions asked you about your political activity different than the way things happened as you remember them?

Mr. Foreman: I object to that as duplicitas.

The Court: Well, I think that it should be separated. A part of the testimony of your witness was concerning matters related to the alleged schemes and artifice to defraud and a good part of his testimony did relate to his political activity, so I could hardly say his political activity has not affected his testimony.

Mr. Foreman: I will agree.

The Court: A great deal of his testimony was about his political activity. I think that should be separated.

Mr. Bottler: All right.

With reference to the questions asked of you apart from your political activities, that is, the questions about who you delivered gasoline to and who it was charged to, was that testimony your testimony of the things as you remembered them?

A. May I have that read back to me a little?

Mr. Bottler: I will withdraw the question.

In relation to the matters you testified to concerning the service station, was your testimony influenced by your political activity?

A. No, sir.

Mr. Bottler: That is all.

5-1054 RECROSS EXAMINATION

Q. (By Mr. Foreman) Was your attitude toward these defendants influenced by your political affiliation and theirs?

A. I did not quite get you, Mr. Foreman.

Q. Is your attitude toward these defendants influenced by your political affiliation, that is, to the Freedom Party and their political affiliation to the Old Party?

A. What you want to know—that part doesn't mean anything to me over here. These parties is completely out of the way. I do not want anybody to get convicted just on account of parties, and such as that.

Q. You don't think it would help influence your political future to have these men eliminated a few years?

A. I don't want them eliminated that way.

Q. You don't want them convicted of any wrong?

A. I don't know if they were wrong or not. That is up to you. It is not up to me.

Mr. Foreman: That is all.

Mr. Bottler: No further questions.

The Court: You may step down.

Mr. Bottler: My next witness is Amador Caballero, Jr.

The Witness: (Amador Caballero, Jr.) May I have an interpreter?

Mr. Foreman: Your Honor, I would like this witness examined to determine—as I recall, he never used an interpreter before.

Mr. Bottler: Your Honor, we would suggest that the witness is the best judge of whether he requires or feels he need an interpreter.

The Court: Well—

Mr. Foreman: I think the Judge would be the best judge of it.

The Court: I am surprised. The man's father speaks very good English, and this man is younger, and the way things are, the younger ones have been better educated and been

exposed to the English language more than the older ones, but if the defense counsel wants to ask some questions bearing upon his ability to speak and understand the English language, I will permit it.

Mr. Foreman: Take the stand, please, sir.

The Court: Do you want an interpreter?

Mr. Foreman: No, Your Honor.

The Court: He should be sworn.

5-1056 AMADOR CABALLERO, JR.,

a witness called in behalf of the Government herein, having been first duly sworn, testified on his oath as follows, to-wit:

5-1056 VOIR DIRE EXAMINATION

Q. (By Mr. Foreman) Your name is Amador Caballero?
A. No, sir.
Q. Junior?
A. Yes, sir.
Q. Have you talked with Mr. Bottler about asking for an interpreter before you got on the witness stand?
A. Yes, sir.
Q. And whose suggestion was it, if either of yours, that you ask for an interpreter, yourself or Mr. Bottler?
A. My own.
Q. And when did you make that?

A. Last night.

Q. Where?

A. Hotel room.

Q. Whose hotel room?

A. Rhodes.

Q. You mean Mr. Bottler spent the night with you at the Rhodes Hotel room?

A. No, sir.

Q. How did he happen to be there?

A. He didn't go over there.

Q. Were you there?

A. Yes, sir.

Q. Did you call him?

A. No, sir.

Q. Whom did you talk with?

A. Mr. Bottler.

Q. How did you get there? Were you on the phone?

A. He didn't go over there. I came to his office first.

Q. You were not at the Rhodes Hotel room when you talked with him?

A. No, sir.

Q. You were in his office?

A. Yes.

Q. Last night?

A. Yes.

Q. At what time?

A. 8:30 to 9:30, I believe.

Q. Mr. Amador Caballero, Jr., are you or not a graduate of the Benavides High School?

A. No, sir.

Q. Where did you go to school?

A. Benavides.

Q. How far did you go?

A. The ninth grade.

Q. Did you take English and grammar?

A. Yes, sir.

Q. Did you pass all of your courses until you got into and through the ninth grade?

A. Some of them.

Q. And is or not the English language the language taught in that high school?

A. Yes, sir.

Q. You took reading the fifth, sixth, seventh, eighth and ninth grades?

A. Yes, sir.

Q. How long have you been speaking English?

A. Well, since I remember.

Q. Ever since you can remember.

The Court: I think I have heard enough to be satisfied that the witness has a fair understanding of the English language, and I will rule that his testimony, that he been examined in the English language, that he give answers in the English language, but if there should be some question that he does not fully understand, and if it can be better explained through an interpreter, then the interpreter will be used as to that question, and if there be some answer that he is unable to adequately express himself in English, and if he believes he can express himself better in Spanish, then he may answer the question in Spanish and have it interpreted to the Court, however, it is the instruction and desire of the Court that so far as you can, you shall be examined and you shall answer in the English language.

Mr. Bottler: Your Honor, does the Court want the interpreter standing by him?

The Court: I don't think it is necessary. If the services of the interpreter are required, she can come forward. Does the witness understand the instructions?

The Witness: Yes, sir.

The Court: Very well.

5-1059 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?
A. Amador Caballero, Jr.
Q. For what reason did you ask an interpreter?
A. There are a lot of questions I don't understand.
Q. When?
A. When Mr. Foreman asked me.
Q. When did he ask you questions?
A. Well, in this case.
Q. Where do you live?
A. Benavides, Texas.
Q. How long have you lived in Benavides?
A. Lifetime.
Q. And what do you do there?
A. I run a service station.
Q. What service station?
A. Conoco service station.
Q. Who operated the service station before you took it over?
A. The old man.
Q. Who do you mean by "the old man"?

A. My daddy.
Q. When did you take it over from your daddy?
A. In March, 1953.
Q. Do you know Oscar Carrillo?
A. Yes, sir.
Q. Have you ever sold him any gasoline?
A. Yes, sir.
Q. To whom did you charge that gasoline?
A. To the Benavides Independent School District.
Q. Referring to Government's Exhibit 90, I will ask you about invoice 516032, and ask you if you made out this ticket?
A. Yes, sir.
Q. To whom did you sell the gasoline shown thereon?
A. To the BISD.
Q. Who got the gasoline?
A. Oscar did.
Q. Who signed the name?
A. I did.
Q. How much is the amount of the ticket?
A. One dollar.

Mr. Foreman: That is 516032?

Mr. Bottler: That is correct, Are you ready?

Mr. Foreman: Yes, sir.

Q. (By Mr. Bottler) 516291, to whom did you deliver that gasoline on this invoice?
A. To Bazan, Lorenzo Bazan
Q. Who is Lorenzo Bazan?
A. He is a farm hand.

Q. In whose vehicle did you place this gasoline?

A. In Oscar's vehicle.

Q. All right. Look at invoice 516271. Did you prepare this invoice?

A. Yes, sir.

Q. To whom did you deliver the gasoline?

A. Oscar.

Q. And who signed the signature up here, O. Carrillo, Sr.?

A. He did.

Q. What was the amount of that sale?

A. $3.98.

Q. Invoice 586945. I will ask you, to whom did you deliver that gasoline?

A. Lorenzo Razan.

Q. Whose vehicle was it?

A. Oscar's vehicle.

Q. What was the total amount of that?

A. $4.15.

Q. Invoice 232701, I will ask you, to whom did you deliver this gasoline?

A. Beto Segura.

Q. In whose vehicle was Beto Segura?

A. Oscar's vehicle.

Q. What kind of vehicle?

A. One of those jeeps, army jeeps.

Q. A large or small army vehicle?

A. Large.

Q. Did you make out this ticket?

A. Yes.

Q. Invoice 232663.

Mr. Foreman: Made out the ticket, meaning he signed it.?

Mr. Bottler: No.

Who signed this ticket first?

A. Beto signed it.

Q. Who made out and filled out the blank indicating what was sold?

A. I did.

Q. All right, invoice 232663, to whom did you deliver this gasoline?

A. To O. Carrillo, Sr.

Q. Who signed this name, "O. Carrillo, Sr."?

A. I don't know who signed it.

Q. Did you sign it?

A. No, sir.

Mr. Foreman: Could the Court ask the witness please to speak louder? He is dropping into a conversational tone.

The Court: Yes, it is important to speak loud enough so everyone in the courtroom can hear you. The attorney is standing right by your side, but you are not carrying on a private conversation with him. This is testimony in Court, and it is important everyone hear it, so I will ask that you keep your voice sustained so everyone can hear you.

Q. All right. Turning to invoice 917852, I will ask you to whom did you deliver this gasoline?

A. Lorenzo Bazan.

Q. Who signed the name?

A. Lorenzo signed it.

Q. Invoice 918059, I will ask you—what service was rendered on this invoice?

A. What service? Road service.

Q. What else?

A. One flat.

Q. To whom was it rendered?

A. Oscar Carrillo.

Q. Who signed O. Carrillo?

A. I did.

Q. Who made out this ticket?

A. I did.

Q. Invoice 918057, I will ask you to whom your furnished the gasoline shown thereon, and the motor oil?

A. Lorenzo signed it.

Q. Who signed the name L. Bazan?

A. He did.

Q. Invoice 516042, I will ask you to whom you delivered this gasoline?

A. Romero Carrillo.

Q. Romero Carrillo? Is he any relation to Oscar and O. P. Carrillo?

A. A brother to them.

Q. Any relation to you?

A. Brother-in-law.

Q. Do you know whether or not he was working at the School District then?

A. I don't know.

Q. Invoice 516041, to whom did you deliver that gas?

A. To Romero Carrillo.

Mr. Foreman: 516041?

Mr. Bottler: Yes.

Mr. Foreman: He said Romero?

Mr. Bottler: Romero Carrillo.

You don't know whether he was working for the School District or not?

A. No.

Q. Invoice 516040, to whom did you deliver that gasoline?

A. Oscar Carrillo.

Q. Who signed the name O. Carrillo, Sr.?

A. He did.

Q. Invoice 885525, to whom did you deliver this gasoline?

A. Roberto Ornelas.

Q. Who is Roberto Ornelas?

A. He is a lawyer.

Q. Do you know if he is any relation to any of the defendants?

A. He was a friend.

Q. Of whom?

A. O. P. Carrillo and Oscar.

Q. And who signed this, "Oscar Carrillo by Roberto Ornelas"?

A. 882855?

Q. 885525, who signed it?

A. Ornelas.

Q. 885506, who purchased the merchandise thereon? Did you deliver this to Lorenzo Bazan?

A. Right.

Q. And who signed the name?

A. Lorenzo signed it.

Q. Invoice 516035, to whom did you deliver the gas?

A. Lorenzo Bazan.

Q. And who signed this ticket?

A. Lorenzo.

Q. Invoice 885665, to whom did you deliver the merchandise?

A. Lorenzo Bazan.

Q. Who signed it?

A. Lorenzo signed it.

Q. Invoice 516218, to whom did you deliver the merchandise?

A. Oscar Carrillo.

Q. Who signed this name up here?

A. Oscar.

Q. All right. Referring to all of the supporting invoices, which I have just questioned you about, in Exhibit 90, did you make out all of these tickets?

A. Yes, sir.

Q. Turning to Government's Exhibit 91, invoice 232625, I will ask you to whom did you deliver the merchandise shown hereon?

A. Oscar Carrillo.

Mr. Foreman: Pardon me, give me the exhibit number again?

Mr. Bottler: 232625.

Mr. Foreman: Is that on 90?

Mr. Bottler: This is on 91.

Mr. Foreman: All right, thank you.

Q. (By Mr. Bottler) To whom did you deliver this merchandise?

A. Oscar Carrillo.

Q. Who signed the name here?

A. He did.

Q. Invoice 23241, what did you deliver on this invoice?

A. A battery.
Q. What kind of battery?
A. A Delco battery.
Mr. Foreman: What kind of battery?
Mr. Bottler: Delco.
To whom did you deliver it?
A. Oscar Carrillo.
Mr. Foreman: May I see that?
84.3 gallons of battery?
Q. (By Mr. Bottler) What is shown over here next to Conoco gasoline?
A. 84.3.
Q. What is the amount shown?
A. $21.50.
Q. What is the amount shown down here?
A. $21.50.
Q. Who signed the name O. Carrillo, Sr.?
A. I did.
Q. Who told you to sign it?
A. He did.

The Court: Let me make this suggestion, in the interest of time. Do you expect to offer this in evidence?

Mr. Bottler: Yes, we do.

The Court: If they are admitted in evidence, they will show in each case what the amount is. Is it important to show he made the sale, or who signed it? I think these things should be shown, but to take up time on each ticket, how much is it for, if it is in evidence, the jury can look at it and see how much it is for. The suggestion is made in the interest of saving time.

Mr. Bottler: All right. There are one or two things I want to go into on the amount, Your Honor.

The Court: Very well. If there is any particular reason why it should be gone into, we can, but I think we can save time if we can avoid, as routine, to avoid routinely going into the amount, which is simply reading it from the ticket.

Mr. Bottler: All right, Your Honor.

Invoice No. 232740, I will ask you who signed this ticket?

A. Oscar signed it.

Q. And who got the goods?

A. He did.

Q. 232719, who signed it?

A. Oscar signed it.

Q. Who got this material?

A. Oscar did.

Q. 232566, who signed this?

A. Oscar.

Q. Who got the material shown thereon?

A. He did.

Q. 232588, I will ask you who signed this?

A. I did.

Q. And where was Oscar at the time you made this up?

A. He was not at the station.

Q. And where was Oscar? What did you render on that ticket?

A. Road service.

Mr. Foreman: What did he say?

A. A flat, and road service.
Q. 232581, who signed this?
A. Oscar signed it.
Q. Who got the goods?
A. He did.
Q. 232622, who signed this?
A. Beto Segura.
Q. What did Beto Segura do in the summer of 1953?
A. He worked for Oscar Carrillo.
Q. In whose vehicle was this placed?
A. In Oscar Carrillo's jeep.
Q. Invoice 232424, who signed this?
A. I sign it.
Q. Who got the goods?
A. Oscar.

Mr. Foreman: He said who signed it?

A. I did.
Q. Invoice 232436, who got the good on this?
A. Beto Segura.
Q. Beto Segura. Who signed it?
A. Beto signed it.
Q. Invoice 232440, whose signature is this?
A. Beto signed it.
Q. In whose vehicle was he when he got gasoline?
A. In Oscar's.
Q. 232448, who signed this?
A. Beto signed it.
Q. Whose vehicle was it placed in?
A. In Oscar's vehicle.
Q. 232591, who signed this?
A. Beto signed it.

Q. And in whose vehicle was he when he got it?
A. Oscar's.
Q. 232586, who signed this?
A. Beto signed it.
Q. On what vehicle was this service rendered?
A. Oscar's vehicle.

Mr. Foreman: Is it service?

Mr. Bottler: Service.
232415, who signed this ticket?
A. I did.
Q. And who got the goods and services shown thereon?
A. Oscar.
Q. 232617, who signed this ticket?
A. Beto Segura.
Q. And in whose vehicle was the gasoline placed?
A. In Oscar's.
Q. 519503, who signed this?
A. Beto signed it.
Q. In whose vehicle was he?
A. Oscar's.
Q. How many trucks, or jeeps, or vehicles did Oscar have in the spring of 1953, that were being used?
A. He used two.
Q. By Beto or Lorenzo?
A. Two.
Q. Invoice 232733, who signed this?
A. Lorenzo.
Q. In whose vehicle was he?
A. Oscar's.
Q. 337705, who signed this?
A. Oscar.

Q. Who got the goods on this?
A. He did, I guess.

Mr. Foreman: I can't hear him.

Mr. Bottler: He said, "He did, I guess." Did you make out this ticket?

A. No, sir.

Mr. Foreman: Who did he say signed it? Did you ask him?

A. Oscar signed it.
Q. You did not make out the ticket?
A. No, sir.
Q. I see from the last invoice which I asked you about, 337705, did you write up all the tickets on Government's Exhibit 91?
A. Yes, sir.

Mr. Foreman: What was that, 337705, was that the—

Mr. Bottler: 337705, the dealer's signature shown to be Arthur Reimers, San Antone, Texas.

Mr. Foreman: Is that the one he says Oscar got?

Mr. Bottler: No, he said he didn't know whether Oscar got it. He just said this was Oscar's signature.

Will you look through Government's Exhibit 92-B. I will ask you, did you write up all the supporting invoices or tickets attached to Government's Exhibit 92-B?

A. Yes, sir.

Q. No, did or not the person whose name is shown as the receiver of the goods receive the material which is shown on the tickets?

A. Yes, sir.

Q. Turning to Government's Exhibit 93, I will ask you first, who is Carlos Herrera?

A. He used to work for the county.

Q. Was he working for the Benavides Independent School District in the spring of 1953, May?

A. I don't think so.

Q. All right. Does he bear any relationship to any of the defendants?

A. I don't think so. I don't know.

Q. All right. Why did you charge this invoice 32736 to Carlos Herrera?

A. I didn't charge it to Carlos Herrera.

Q. I mean charge it to the Benavides Independent School District?

A. He told me Oscar sent him.

Mr. Foreman: I can't understand him.

Mr. Bottler: He said "He told me Oscar sent him over there."

Mr. Foreman: I object to that as hearsay, Your Honor. I ask that the jury be instructed not to consider it.

The Court: Objection sustained, and the jury is instructed not to consider it.

Q. (By Mr. Bottler) Would you look at the rest of the supporting invoices on this? I will ask you, who made out all of the tickets attached to Government's Exhibit 93?

A. I did.

Q. And did you or not deliver to the person shown on each of these tickets as being the receivers of the goods in the amount shown on here from your Conoco station?

A. Yes, sir.

Q. Turning to invoice 216688 contained in 94-A, I will ask you, who received the goods shown on this ticket?

A. J. G. Garza.

Q. Whose signature is that shown in the upper left-hand signature?

A. That is his signature.

Q. It is his signature?

A. Yes, sir.

Q. Do you know J. G. Garza?

A. Yes, sir.

Q. Do you see him here?

A. Yes, sir.

Q. Where is he?

A. That one over there (indicating).

Q. All right. Invoice 917967, who received the goods shown on here?

A. J. G. Garza.

Q. Invoice No. 216664, who received the goods shown thereon?

A. J. G. Garza.

Q. Whose signature is it?

A. J. G. Garza.

Q. 216673 who received the goods shown on here?

A. J. G. Garza.

Mr. Foreman: 216673?

Mr. Bottler: 216673.

Whose signature?

A. J. G. Garza.

Q. Invoice 917998, who received the good hereon?

A. J. G. Garza.

Q. Whose signature is that?

A. That is his.

Q. Invoice 216687, who received the goods shown hereon?

A. J. G. Garza.

Q. With reference to all of the tickets shown on Government's Exhibit 94-A, I will ask you whether or not you wrote up all of these tickets?

A. Yes, sir.

Q. I will ask you, did or not the person signing in the place indicating receipt of the goods receive the merchandise?

A. Yes, sir.

Q. Now, in what vehicle or vehicles did J. G. Garza get gasoline at your station?

A. He got gasoline in his car there in one of those big tank trucks, trailer tank trucks.

Q. What was he doing, if you know, with the trailer tank truck?

A. He was watering the football field.

Mr. Bottler: All right. The Government offers in evidence Government's Exhibits 90, 91, 92, 93, 94-A, B, C and D, 95 and 96.

Mr. Foreman: May it please the Court, we ask that any such witness testimony, as now designated, should be limited to the persons whose name appears to have re-

ceived the merchandise, gas, or oil or service, in other words, limited to either Oscar Carrillo for services he may have received, the half a dozen items to Mr. J. G. Garza to him, and I believe those are the only ones except for the alleged representatives of Mr. Carrillo, and we ask that the exhibits be limited to those named on the faces of the alleged invoices.

Mr. Bottler: Your Honor, we offer it to show the general scheme, artifice to defraud, and the conspiracy as alleged.

The Court: It will be so received, and Government's Exhibits 90 through 96, inclusive, are admitted in evidence.

Mr. Foreman: The Court declines to limit them, and admits them generally as to all counts as to all defendants?

The Court: Yes, sir.

Mr. Bottler: May I have just one minute?

The Court: Very well, sir.

Mr. Bottler: In connection with the mailing count, the 17th count, 18th count and the 19th count of the indictment which charges mailing of invoices on or about June 1, 1953, and the 17th count; charges Government's Exhibits 92-A and 92-B, and the 17th count Government's Exhibits 95 and 96 on the 18th count, which charges the mailing of the letter to the Continental Oil Company. This is the check and a copy of the check.

The Court: Let me follow you. Which on the 17th count?

Mr. Bottler: Government's Exhibits 92-A and 92-B.

The Court: 92-A and B on 17?

Mr. Bottler: Yes, Your Honor, and on the 18th count, Government's Exhibits 95 and 96, being the check dated March 31, 1953, and the attachment to the check.

The Court: I understand that should be limited to Counts 17 and 18?

Mr. Bottler: We offer first 92-A with respect to the mailing charge in the 17th count as well as to the general scheme and artifice to defraud. We are offering them especially with regard to the 17th count.

The Court: Is that also true of 95 and 96?

Mr. Bottler: That is offered on the 18th count of the indictment.

The Court: On the 18th count only?

Mr. Bottler: As well as the general scheme and artifice to defraud.

The Court: I had previously ruled 95 and 96 should be received as to all defendants and as to all counts.

Mr. Bottler: All right, Your Honor. In explaining the offer, I had said on the general scheme, and I just wanted

to make sure I had made a proper offer to tie it into the count.

The Court: Are these offered also as to the general scheme?

Mr. Bottler: Yes, Your Honor.

The Court: As well as as specific evidence on Count 18?

Mr. Bottler: That is correct.

The Court: Do I understand you are asking now that they be limited?

Mr. Bottler: No, I am not asking that they be limited. I am trying to clarify the offer of the Government to make sure I have offered it on the specific Count 18.

The Court: You are offering that on both specific counts as well as to the general scheme relating to all counts?

Mr. Bottler: Yes, Your Honor.

Mr. Foreman: Your Honor, we object to the prosecution, after some evidence is in generally as to all defendants as to all counts arguing as to what it applies. This is not material, and it is not a proper time for argument until the evidence is in.

The Court: The jury is instructed not to conside the comments of counsel argument.

Mr. Foreman: Just for our files, which we are keeping here, for what purpose? Is it our understanding everything is offered from 90 to 96, and admitted generally as to all defendants?

The Court: As to all counts, which would include Counts 17 and 18.

Mr. Foreman: And there is no limitation on it?

The Court: Yes, sir.

Mr. Foreman: We except.

Q. (By Mr. Bottler) Now, did you ever deliver any gasoline to Beto Segura when he was driving something other than one of Oscar's army jeeps or vehicles, and charge it to the Benavides Independent School District? That is what I am talking about.

A. No, sir.

Q. Did you ever deliver—I will strike that.

Did you ever—in what vehicles did you place the gasoline which, on these invoices, is shown as being delivered and received by Oscar Carrillo — delivered to Oscar Carrillo?

A. His jeep.

Q. Any other vehicle where the name Oscar Carrillo appears thereon?

A. His car.

Mr. Bottler: All right. Pass the witness.

Q. (By Mr. Foreman) Mr. Caballero, Jr., do you recall each delivery of each item in each of these invoices for each of the six or seven months about which you undertake to testify?

A. Each one at a time?

Q. Yes, sir. Do you have an independent recollection of the delivery of so many gallons of gas on such and such a day, and to whom it was delivered, as represented by these invoices?

A. No, sir.

Q. Then you, when you state that you delivered such and such to Beto or Segura or Bazan or Roberto Ornelas or Oscar Carrillo or J. T. Garza, you simply testified from whatever piece of paper was presented to you at a given time, and entered that into the record, aren't you?

A. Yes, sir.

Q. And you do not know that you delivered a single bit of this item to a single one of these people at a single time mentioned independently of whatever might be represented by the white sheet of paper, do you?

A. I want an interpreter—

Mr. Bottler: Your Honor, we would ask counsel to break down the question. I believe it is a little too long and involved.

The Court: I think it is a proper question, and I will allow it.

Q. (By Mr. Foreman) Are you confused? Did you understand my question?

A. I am confused.

Q. Were you confused before Mr. Bottler suggested you might be?

A. No, sir.

Q. You were not. All right. Let's refer to prior to his suggestion, and will you please read the question little lady?

The Official Reporter (Reading): "And you do not know that you delivered a single bit of this item to a single one of these people at a single time mentioned independently of whatever might be represented by the white sheet of paper, do you?"

A. I can't answer that question. I don't know what you mean.

Q. Do you recall whether or not you ever delivered any gas at any date represented by one of these white sheets of papers?

A. I don't understand.

Q. Tell this jury what day or what month or what year you ever delivered J. G. Garza any gasoline?

A. I don't remember.

Q. Tell this jury what day or what month or what year you ever delivered Oscar Carrillo any gasoline?

A. I don't remember.

Q. Tell them what day of what month of what year you delivered Beto Segura any gasoline?

A. I can't tell you.

Q. Tell them what day of what month of what year you ever delivered Bazan any gasoline?

A. I don't know.

Q. Then, except for what Mr. Bottler showed you on the paper, you couldn't have testified as you did when he was questioning you, could you?

A. Yes, sir.

Q. That is why you testified as you did, because he showed you a piece of paper?

A. Yes, sir.

Q. And as to whether that gas was delivered or not, you have no recollection?

A. That gasoline was delivered.

Q. I beg your pardon?

A. That gasoline was delivered.

Q. You have got there when it was delivered?

A. It is there, and they got it.

Q. When you say "there," you point toward the exhibits lying in my lap, Government's Exhibits 90 through 94. That is what you mean, isn't it?

A. Yes, sir.

Q. Actually, if you had signed some of those tickets and showed so much gasoline, even that 84.3 gallons of battery for $21.00 that you signed, and had not delivered the gasoline, you would have been that much money ahead, would you not, Mr. Amador Caballero, Jr?

A. Yes, but I delivered it.

Q. You would have been, but you delivered it?

A. I delivered it.

Q. And are you or no in business to make as much money as you can?

A. Yes, sir.

Q. And you could make more money by charging for and getting cash, or getting more gasoline when you turned in a ticket, if you did not deliver the gas to the customer you charged for it than you would if you had delivered the gas?

A. Yes, but we never did it.

Q. We never did it? Sir?

A. We never did it.

Q. You mean that you never did it? You are an honest man?

A. Well, I don't say I am an honest man, but I never did it.

Q. As a matter of fact, you have sworn under oath you are not an honest man?

A. I don't say I am an honest man or not.

Q. Tell us now or not, are you or not an honest man?

A. I am an honest man.

Q. How long have you been honest, Mr. Amador Caballero, Jr.?

A. I have been honest.

Q. Since last November?

A. Yes, sir, before that.

Q. For about how many days before that?

A. Well, I always been honest.

Q. Did you or not, last November, tell to the jury that you commenced being honest about seventeen days before you testified?

A. Yes, but I was confused.

Q. You were confused. Did you or not testify under oath, if you were on a jury you would not believe yourself under oath no matter what you swore to?

A. I don't understand.

Q. Did you or not give that testimony?

A. Yes, sir.

Q. Sir?

A. Did I give my testimony?

Q. Did you or not, when you were questioned before in Judge Hannay's court last Noember, testify substantially that your reputation for truth and veracity was such that if you were on a jury, you would not believe

Amador Caballero, Jr. no matter what he testified to? Did you swear to that?

A. I don't remember.

Q. What did you say in regard to believe yourself under oath, to that jury?

A. I don't remember.

Q. Would you, if you were on this jury, believe Amador Caballero, Jr., knowing him as you do know him?

A. Yes, sir.

Q. Then, Mr. Caballero, did you or not certify to the Conoco Oil Company that you had sold 84.3 gallons of gasoline, when in truth and in fact you did not sell it?

A. Did I told the company?

Q. Yes, sir. Did you make representation over your signature that you had done that, when in truth and in fact it was false and fraudulent?

A. I know I didn't tell the company.

Q. You didn't do what?

A. I did not tell the company.

Q. Did you send out a ticket and sign it yourself, saying that you did it?

A. Did I fill it out?

Q. Yes, sir. Did you fill out that ticket?

A. Yes, sir.

Q. Did you sign it?

A. Yes, sir.

Q. Whose name did you sign to it?

A. Oscar Carrillo.

Q. It says Oscar Carrillo, Sr. Is that your handwriting?

A. It doesn't say Oscar Carrillo, Sr.

Q. What does it say?

A. O. Carrillo, Sr.

Q. Oh, excuse me. You are entirely correct. As far as that goes, it doesn't say A. Caballero, Jr. It says A. Caballero. Did you intend for them to think your honest old father filled out that fraudulent, fictitious receipt? Are you attempting to misguide the public and hide behind your father?

A. No, sir, I have nothing to hide.

Q. Do you have an A. Caballero, Jr.? When you first took the stand, you said A. Caballero is not your name, 'I am A. Caballero, Jr."?

A. Yes, sir.

Q. But here you are A. Caballero anonymous, aren't you?

A. Yes, sir.

Q. Whose name did you intend to be here on this fraudulent certificate, where you set out 84.3 gallons of gasoline when really it was a battery?

A. Oscar Carillo.

Q. I know you intended it to be Oscar Carrillo, Sr., but you didn't intend to sign A. Caballero?

A. I intended to, but I didn't sign it.

Q. This was just an honest error?

A. An honest error.

Q. Was your greatest error when you said Conoco N-TANE gasoline, 84.3 gallons. Was that honest or dishonest?

A. That was dishonest, but that was a battery.

Q. You are only dishonest where merchandise and personal property are concerned, correct, sir? Mr. Caballero, you got, because of your representation, $21.50 worth of Conoco gas wholesale, didn't you?

A. Yes, sir.

Q. That you wouldn't have gotten, if you hadn't so done it?

A. I sold a battery.

Q. Did you really?

A. Sold the battery? Sure I did.

Q. Do you know where you got the battery you sold?

A. Yes, sir.

Q. Where?

A. Standard Auto Parts.

Q. Standard what?

A. Parts.

Q. At Alice?

A. Yes.

Q. You keep a record of the batteries you sell so as to be able to give a guarantee on them, the serial number, don't you?

A. I stamp the date on the battery.

Q. Do you or not, at your filling station, keep a record of the batteries you sell by serial number?

A. Do I keep a record on them?

Q. That is my question.

A. No, sir.

Q. Do you recall my asking you to get up a record, your record of battery sales or the sales from Standard Auto Parts at the last trial?

A. No, sir.

Q. Have you ever gotten any record? Do you have any record now showing a battery obtained by you from Standard Auto Parts on April 6, 195[illegible]—

A. No, sir.

Q. As a matter of fact, there isn't any such record and never has been?

A. There is a record. They got the record.

Q. Mr. Caballero, did you or not sign over half of the tickets that you have charged to the Benavides Independent School District where you alleged to have sold or delivered gasoline to Oscar Carrillo?

A. No, sir.

Q. How many did you sign?

A. I don't remember. I didn't sign over half.

Q. Approximately. How did you decide how many you would sign and how many you would insist upon being genuine?

A. Well, let me count them and I'll tell you.

Q. Have you counted them all?

A. No, sir.

Q. What is your best judgment as to the number you put in and signed yourself as though you had delivered gasoline to Oscar Carrillo?

A. I don't know.

Q. You wouldn't know whether it was 25 or 33-1/3 or 40 per cent?

A. No, sir.

Q. It might have been it was that many?

A. Maybe so.

Q. Now, Mr. Caballero, with reference to these deliveries to Mr. J. G. Garza — I believe they were all in Government's Exhibit 94. J. G. Garza was the trustee in charge of repairs and maintenance, was he not, or do you know?

A. I don't know whether he was in charge.

Q. There is one. Let's see that we get every one of the J. G. Garza deliveries. That is 1, 2, 3, 4, 5, aren't there? All of those are signed by J. G. Garza, and I believe you have testified they were delivered to J. G. Garza, haven't you?

A. Yes.

Q. Let's get the dates of them. The first of the five is 7-12-53. That would be July 12, 1953, wouldn't it?

A. I guess so.

Q. Well, if you don't know, would you be able to tell us who might know? Did you fill this out?

A. I filled it out.

Q. At any rate, the date on it I am reading correctly?

A. Yes, you are.

Q. 7-12-53, and you don't know whether it is July 12, 1953, or it might be even misquoted, the 7th day of December, 1953?

Mr. Wilkey: Your Honor, may I have the number of the ticket when he reads it?

Mr. Foreman: It is 216688, and the next ticket, 917967, it is dated 7-9-53, isn't it?

A. Yes, sir.

Q. And the next ticket, 216664 is dated 7-7-53, isn't it?

A. Yes, sir.

Q. And the next one, 216673 is dated 7-8-53, isn't it?

A. Yes, sir.

Q. And 917998 is dated 7-16-53, isn't it?

A. Yes.

Q. All of those are within a period of time from the 7th of July to the 16th of July, approximately an eight or nine-day period, aren't they?

A. Yes.

Q. Show us on there where or in what vehicle you placed your merchandise.

A. It was either in his car or in the tank truck.

Q. Just show us on the ticket, if you can.

A. I can't show you on the ticket.

Q. It is not shown, is it?

A. No, sir.

Q. It might, every gallon of it, have gone into the truck, mightn't it?

A. Yes, but I put some in the car.

Q. As far as this ticket is concerned—

A. Oh, yes, ticket.

Q. Then the total of all of this, we have got— $10. let's see—if we add them up correctly—$4, $5—that is $19, plus some cents, on each of them, $3, $22, and the other is $25 and a few odd cents on each of them, making $27.50 would cover the whole bunch?

A. Yes.

Q. Do you know whether or not from the 7th of July to the 16th of July, Mr. Garza was watering the football field?

A. He watered the football field.

Q. And you know at least a portion of the gasoline went in there?

A. Yes, sir.

Q. And there isn't—yes, here is another, 7-10-53 is another J. G. Garza with another $5, which would raise it perhaps to $32?

A. Yes, sir.

Q. And except for that last one being—for the prosecution records, No. 216678—you don't know whether all $32 was of gasoline that is used by this very records was used in behalf of the Benavides Independent School District or not by J. G. Garza, do you?

A. No, sir.

Q. Sir?

A. I didn't catch that question.

Q. You do not know whether every gallon of gasoline represented by these tickets, dated in July from July 7, 1953 to July 16, 1953, were used in connection with the business of the Benavides Independent School District, do you?

A. I don't know.

Q. You don't know.

The Court: Gentlemen, court will recess for 20 minutes.

(Short recess.)

The Court: Be seated, please.

Mr. Foreman: Give me my last question, please?

The Official Reporter (Reading): "You do not know whether every gallon of gasoline represented by these tickets, dated in July from July 7, 1953 to July 16, 1953, were used in connection with the business of the Benavides Independent School District, do you? Answer: I don't know. Question: You don't know."

Q. (By Mr. Foreman) Now, Mr. Caballero, I am going to show you Government's Exhibit 91, and ask you to follow with me through here and count the number of places that Oscar Carrillo's name appears signed at the top where it says: "Good received in good order by." Let me start at the first one. The first one is 232625 where Oscar Carrillo's name appears. That is issued at the Benavides station. The one, the last one here is in San Antone, which I shall not consider, but only those that came from the Caballero station. That is No. 1. The next one, the next ticket, 232416, which is 2, the next is the third

ticket, 232740 and it is No. 3, with Oscar Carrillo's name, isn't it?

A. Yes.

Q. The next one 232719, it also has Oscar Carrillo, or the fourth time it appears. The next one is 232566 and the fifth time Oscar appears?

A. Yes.

Q. The next is 232588, and that is the sixth time the name appears, isn't it?

A. Yes.

Q. The next is 232581 and the seventh time it appears, isn't it.

A. Yes.

Q. We pass over, and this is 232424, the eighth time the name appears, isn't it?

A. Yes, sir.

Q. 232415, the ninth time the name O. Carrillo, Sr. appears, isn't it?

A. Yes, sir.

Q. And this last time, it appears at another station. San Antone, wasn't it?

A. Yes.

Q. Then there are nine times in this exhibit in the month of March, 1953. Now, let's see how many of them were signed by O. Carrillo, Sr. and how many were signed by you. Who signed this first one?

A. He did.

Q. Who signed the second one?

A. I did.

Q. Who signed the third one?

A. I didn't sign that.

Q. Does it look to you like it is Oscar Carrillo's?

A. Yes, sir.

Q. That is 232740. By the way, who signed A. Caballero down here? Did you sign that?

A. Yes, sir.

Q. Then it is your testimony that the signature here, "A. Caballero," and the signature here is the same?

A. Yes.

Q. Who signed this one?

A. Oscar signed it.

Q. That makes three he signed, according to you?

A. Yes.

Q. Who signed this one?

A. He did.

Q. That makes four, and who signed this one?

A. I did.

Q. Who signed this one?

A. He did.

Q. And who signed this one?

A. I did.

Q. Oscar Carrillo signed four of them and you signed five of them, didn't you?

A. Yes, sir.

Q. Wait a minute. I believe we have another one over here. Who signed this one?

A. I did.

Q. You signed five, and Oscar signed four. You signed more than half of the tickets?

A. Yes.

Q. Did you give the gasoline each time?

A. Yes, sir.

Q. By the way, did you ever have Oscar sign the ticket—did you put a separate ticket for each delivery of gas to a car?

A. What do you mean?

Q. Did you, every time you filled a gasoline tank, did you fill out a ticket?

A. Yes, sir.

Q. Did he ever come there in more than one car?

A. I don't remember.

Q. You don't remember his ever having done so?

A. Well, I don't remember.

Q. Well, he couldn't himself come there in more than one car, could he? To be as perfectly exact as you are about Junior in Caballero, it would have been physically impossible for him to have ridden up there Roman tandem, but did he ever come up there and have gasoline put in two cars at the same time?

A. I don't remember.

Q. How much gasoline would his car hold?

A. About 17 gallons.

Q. Seventeen gallons, and did you ever fill his tank with whatever it would hold and have him sign the ticket, and when he left add another tankful to the same ticket and send it in as a charge to the Benavides Independent School District?

A. No, sir.

Q. You never did that. Now, this is one of those original Oscar Carrillo signatures, genuine, unexpurgated, on ticket 232719, isn't it?

A. Yes, sir.

Q. Tell the jury whether or not you show—is this your signature, Mr. A. Caballero, Jr.?

A. Yes, sir.

Q. And it is dated March 18, 1953, isn't it?

A. Yes, sir.

Q. Now, tell the jury whether or not on that day you put 16.7 gallons of Conoco N-TANE gasoline at 23-1/2 cents, or $3.99 and in the same tank at the same time, right after he had signed it of course, you put 14 gallons of Conoco Ethyl at 27-1/2 cents, making $3.85, or a total of $7.84. Did you do that, Mr. Amador Caballero, Jr.?

A. I done that before, and then he signed it.

Q. You put in 16.4 in a 17-gallon tank, and you put in the 14 gallons also?

A. It must have been two cars. I don't remember.

Q. I see. It must have been. Then Mr. Caballero, did you ever bill the Benavides Independent School District for 700 gallons of gasoline alleged to have been delivered at one time?

A. I don't remember.

Q. To Beto Segura?

A. I don't remember.

Q. Were you shown such a receipt by the prosecuting attorneys in this case, and asked if you had delivered 700 gallons of gas?

A. I don't remember.

Q. You don't remember. You would remember if that large an item appeared, wouldn't you?

A. I don't know.

Q. You hay have done that? Well, did you ever deliver 700 gallons of gasoline to Beto Segura?

A. I don't remember.

Q. If you did charge for 700 gallons and got paid for 700 gallons and you didn't deliver it, it was an outright theft, wasn't it, Mr. Caballero?

A. Yes, sir.

Q. By you, Mr. Caballero?

A. Yes, sir.

Q. All right. Now, Mr. Caballero, did you ever put 23 gallons of gas, 23-1/2 gallons of gas in O. Carrillo, Sr.'s tank that would hold 17 gallons?

A. It might have went over there in two cars, a car and a jeep.

Q. Let's see. We turn now to the very next item after —by the way, the items where you see that 84.3 gallons of gas, that was actually a battery? By the way, isn't that correct?

A. Yes, sir.

Q. And isn't the very next ticket here in Government's Exhibit 91, that is—I believe you identified that as O. Carrillo Sr.'s signature. You don't have any reservation about that identification, do you? You know that is the signature?

A. I can't tell that is his signature or not.

Q. You did a while ago?

A. It ain't mine.

Q. If it isn't his, there are only eight, of which you signed five. Isn't that true? You identified this as O. Carrillo's signature a while ago?

A. I guess so.

Q. All right, and don't you show that—what is the number on that?

A. 232740.

Q. And don't you put on that ticket, Mr. Amador Caballero, Jr. 23-1/2 gallons of gasoline, Conoco N-TANE gasoline, don't you show that to have been delivered to Mr. Carrillo?

A. Yes, sir.

Q. On March 11, 1953?

A. Yes, sir.

Q. Did he bring along a bucket, or did you pour that in his bucket?

A. No, I suppose he came in a car or jeep.

Q. But the most it would hold would be 17 gallons?

A. In the car.

Q. Did the jeep hold as much as the car?

A. It would hold more.

Q. About how much?

A. Thirty gallons.

Q. Did Oscar Carrillo ever bring his jeep there?

A. He went over there sometimes.

Q. But you don't know whether that was a jeep or not?

A. That is right.

Q. Was the one incident about which I inquired represented here by check 232416 for $21.50, the 84.3 gallons, the only time that you ever misrepresented to Conoco a purchase of gasoline that was not in truth gasoline?

A. No, that was not the only time.

Q. You did that habitually, as a practice?

A. When they took the merchandise.

Q. Sir?

A. When they took the merchandise.

Q. You would do it regardless of who the customer was?

A. As long as they want to.

Q. Sir?

A. As long as they want to.

Q. As long as they want to?

A. Yes, sir.

Q. You still do it?

A. No, sir.

Q. I refer now, Mr. Caballero, Jr., to Exhibit 93 wherein you claim to have delivered—is that 963 gallons, or 96.3 gallons?

A. 96.3 gallons.

Q. By ticket No. 433563. Now, did you really deliver that, or do you know whether you did or not?

A. We delivered it.

Q. You delivered 96.3 gallons?

A. Yes, sir.

Q. At one time?

A. Yes, sir.

Q. In one car?

A. No, sir, seven cars and a jeep.

Q. Did you keep a separate book and enter them and add them up and enter on one ticket whenever Mr. Beto Segura wrote his name, or did he write his name every time you delivered gasoline?

A. No, he sign his name.

Q. Did Mr. Beto Segura bring a whole fleet of trucks up there to get this 96.3 or 963 gallons?

A. I don't know, but it was delivered.

Q. And that wasn't a fictitious, fraudulent transaction wherein you sold merchandise and charged it as gasoline? This was a bona fide, honest, above-board operation, was it, Mr. Caballero, Jr.?

A. Yes, sir.

Q. How do you know?

A. I know.

Q. If you had a practice that prevailed generally, and any time anybody wanted to you would charge batteries or tires or other merchandise to the Conoco as gasoline, if that was an invariable practice, how can you recall what occurred back there on May 26, 1953 as represented

by ticket 433563? How do you know it wasn't just a figment of your imagination?

A. It wasn't. That was gasoline.

Q. It wasn't merchandise?

A. Gasoline and merchandise.

Q. Gasoline and merchandise. Well, you would have recalled if it had been something else?

A. Yes, sir.

Q. Tell us any given day that you sold a tire to anybody down there in Benavides, and charged it as gasoline?

A. I can't tell you.

Q. All right, but you know this was gasoline?

A. Yes, sir.

Q. Had you turned honest between March and May of 1953?

A. I can't answer you that question.

Q. Mr. Caballero, you were asked whether or not Mr. Romero Carrillo was working for the school system at the time he signed for some gasoline. Don't you know that Romero Carrillo is assistant football coach and has been for several years at the Benavides Independent School District?

A. I don't know.

Q. Sir?

A. I don't know.

Q. You know that he hasn't been?

A. Well, I can't tell you that.

Q. Do you know whether or not he likewise scouts the other teams that Benavides is going to play the preceding Saturday before Friday night before they play football?

A. I don't know.

Q. Then you do not know that the two items aggre-

gating approximately six or seven dollars of Romero Carrillo's were used in behalf of the Benavides Independent School District or not, do you?

A. I don't know.

Q. And likewise, with reference to Roberto Ornelas, you don't know whether or not he was on a mission for the Benavides Independent School District at the time he signed for that one little tank of gasoline?

A. I don't know.

Q. Isn't it true, Mr. Amador Caballero, Jr., that anybody who walked up to your filling station could charge anything to the Benavides Independent School District, as far as you are concerned?

A. No, sir.

Q. Isn't it true many items were charged to the Benavides Independent School District when nobody appeared at the station either in a car or on foot?

A. No, sir.

Q. Do you owe your success, Mr. Caballero, solely to your industry, or part to your imagination in writing out these tickets?

A. What do you mean by that?

Q. I mean, have you made more profit working at your filling station, or juggling these receipts for customers?

A. Where do I make my profit?

Q. Yes.

A. At the station.

Q. You make so much a gallon at the station, but it is 100 per cent if you fill out one of these fraudulent receipts, isn't it?

A. Yes, but I didn't do it.

Q. Mr. Caballero, when you testified before, when this case was tried last November in Judge Hannay's court, you were on the stand approximately two hours, weren't you?

A. I don't remember.

Q. Did you ever at any time ask for an interpreter?

A. Well, a few minutes ago.

Q. Well, that time when the case was on trial before, did it ever occur to you to ask for an interpreter?

A. No, sir.

Q. Haven't you actually acted as interpreter for people there in Benavides from English into Spanish, and Spanish into English, haven't you?

A. Yes, sir.

Q. In fact, you are just about as expert in the use of the English language as you are in the Spanish language, aren't you?

A. I don't know.

Q. If you—sir?

A. I can't tell you that. I don't know myself.

Q. Don't you have as large a vocabulary, or even larger in the English language than you have in the Spanish language?

A. No, sir.

Q. You are, I believe, the son of Amador Caballero, Sr.?

A. Yes, sir.

Q. Is he of the Old Party or of the Freedom Party?

A. He is Freedom Party.

Q. And you?

A. I am Freedom Party now.

Q. And have been for how long?

A. Since November.

Q. Last November?

A. Yes, sir.

Q. You just were not Freedom Party before?

A. No, I was undecided.

Q. Well, whether you were or not, were you not selected as a representative of the Freedom Party on a Duval County grand jury?

A. I serve as a grand juror.

Q. When?

A. On November term.

Q. Last November?

A. Yes.

Q. Selected by your father?

A. I don't remember.

Q. You served with several of your relatives, did you not?

A. Yes, sir.

Q. You don't know whether your father selected you and his brother, brother-in-law, son-in-law, and nephew on that grand jury?

A. No, sir,

Q. Do you know whether he was on the commission that did select you?

A. No, sir.

Q. You do not know how you happened to get on there?

A. Right.

Mr. Foreman: That is all, Your Honor.

Mr. Bottler: Could I have these exhibits, please, Mr. Foreman.

Mr. Foreman: By the way, may I ask one more question, Mr. Bottler?

The Court: Your may, sir.

Q. (By Mr. Foreman) Will you tell the jury what Amador Caballero means in English?

A. Lover-gentleman.

Q. Doesn't it really mean lover-boy-on-horseback?

A. I don't know.

Q. You think it is just lover-gentleman, or is it loving-gentleman?

A. No, lover-gentleman.

Q. Amador is lover?

A. Yes.

Q. Caballero is gentleman?

A. All the way.

Q. It means a gentleman lover, doesn't it?

A. Yes, sir.

5-1111 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Turning to Government's Exhibit 92-B, I will show you the invoices on which the name O. Caballero, Sr. or Oscar Carrillo appears in the place where the persons signs receiving merchandise, and I will ask you, did you sign this or did Oscar sign this?

A. Oscar signed it.

Q. That is one. The next is 32620. Who signed this?

A. I signed it.

Mr. Foreman: Your Honor, I have no objection to his stating he signed it, but whether or not "did you sign

it or did Oscar sign it," is leading and suggestive, and furthermore the witness isn't qualified.

The Court: That is a proper suggestion. You may ask him who did sign it, if he knows.

Mr. Bottler: Yes, Your Honor. I was trying to save time.

That is one Oscar signed himself and one you signed for him?

A. Yes, sir.

Q. The next one, who signed 32627?

A. Oscar.

Q. That is two for Oscar. This 32557?

A. Oscar.

Q. Three for Oscar and one for you. 32402, who signed this?

A. Oscar.

Q. 32404?

A. Oscar.

Q. That is five. 32426, who signed this?

A. Oscar.

Q. In this exhibit, he signed six and you signed one for him?

A. Yes, sir.

Q. That is not 50 per cent, is it?

A. No, sir.

Q. Now, I will ask you going back to say invoice 32557, dated May 5, 1953, did you make out this ticket yourself?

A. Yes, sir.

Q. On what day did you make it out?

A. The 6th day and the 5th month.

Mr. Foreman: Do you have 92-B in your hand?

Mr. Bottler: That is right.

Mr. Foreman: That is what you still have?

Mr. Bottler: Yes.

Now, does it refresh your memory to look at this memorandum you made at the time to tell to whom you delivered the merchandise?

Mr. Foreman: I object to that as leading and suggestive, Your Honor.

The Court: Objection overruled.

Q. (By Mr. Bottler) Does it not refresh your memory to look at this ticket to tell who got gasoline?

A. I know because that is his signature.

Mr. Foreman: What ticket are you talking about?

Mr. Bottler: 32557.

You know because it is his signature?

A. Yes.

Q. All right. Did the same—now, from whom did you buy your Delco batteries?

A. From Standard Auto Parts.

Q. What salesman?

A. Mr. Light.

Q. Turning to invoice 232416 which shows $21.50, is this a Delco battery?

A. Yes, sir.

Q. And did you—

Mr. Foreman: Does it show that on there?

Mr. Bottler: I ask him was it. No, it does not.

Mr. Foreman: I object to that as leading and suggestive.

Mr. Bottler: I will rephrase.

The Court: Very well.

Q. (By Mr. Bottler) What, if anything, did you give Oscar on this ticket?

A. I gave him a battery.

Mr. Foreman: A Delco battery? Did he say Delco?

A. Yes, sir.

Mr. Foreman: May I ask that the witness speak up?

The Court: Yes, speak out clearly so everyone can hear you.

Q. What do you do after you sell a battery, if anything, out of your station?

A. We put it in the car.

Q. All right, and how many batteries do you keep in stock?

A. I keep two and two.

Q. What happens after you have sold one and put it on the car?

A. I buy another one to replace it.

Mr. Bottler: No further questions.

Q. (By Mr. Foreman) When did you first recall that was a Delco battery, Mr. Amador Caballero, Jr.?

A. When did I first recall?

Q. When did you first remember?

A. When I sold it.

Q. Well, have you known that at all times it was a Delco battery?

A. Yes, sir.

Q. When did you first testify it was a Delco battery?

A. I testified in November.

Q. You did?

A. Yes, sir.

Q. What other kind of batteries do you sell?

A. Southland.

Q. And what kind of automobile did you put this Delco battery in?

A. Oldsmobile.

Q. What size battery was it?

A. It was a medium size.

Q. Medium size?

A. For the Oldsmobile.

Q. Sir?

A. It was for his car.

Q. Do you know how many cells it had?

A. Six cells.

Q. Six cells. Will you give us the approximate dimensions of it?

A. (Indicating.) About that big.

Q. Do you know other than that? Can you give us the inches wide, inches long, and inches deep?

A. No.

Q. Or inches high?
A. No, sir.

Mr. Foreman: That is all.

5-1117 REDIRECT EXAMINATION

Q. (By Mr. Bottler) Did you testify in November it was a Delco battery?
A. Yes, sir.
Mr. Bottler: No further questions.
The Court: You may step down.

5-1117 ROBERTO SEGURA,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified through the interpreter as follows, to-wit:

5-1117 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?
A. Roberto Segura.
Q. Are you also known as Beto?
A. Yes, sir.
Q. How do you sign your surname?
A. All over town by Beto Segura.
Q. For whom were you working in 1953?
A. I was working for Oscar Carrillo. I work for several people, but most of the time for Oscar Carrillo
Q. And what were you doing for Oscar?
A. Repairing fences on his ranch.

Q. Did you ever help build a new fence?

A. In pieces.

Q. All right. Who hauled the fence posts out to oscar's place?

A. I did.

Q. Now, was that—were you working one of Oscar's ranches?

A. Yes.

Q. Was that a new ranch he had just acquired, or was it an old ranch he had owned for some time?

A. A new ranch that he had acquired.

Q. All right, and what vehicles did you drive while you were working for Oscar?

A. A jeep.

Q. Did you ever get any gasoline for the jeep?

A. Yes, I used to load it at the garage.

Q. Did you ever buy gasoline from the Conoco service station in Benavides?

A. Yes, sir, that is where I used to load the gas.

Q. All right. How did you pay for the gasoline?

A. I signed the ticket.

Q. And who sold you to sign the ticket?

Mr. Foreman: Your Honor, I object to that as leading and suggestive. He hasn't testified yet anybody told him to sign it.

Mr. Bottler: I will rephrase it.

The Court: Objection sustained.

Q. (By Mr. Bottler) Did anybody tell you to sign a ticket for this gasoline?

A. Yes, Oscar gave me orders to do that.

Q. All right, and did he tell you what filling station to get it at?

A. He gave me three places where I could charge the gas, the Garcia filling station, Flueste service station, but most of it at the Conoco filling station.

Q. And did you get gasoline at the Conoco filling station frequently or infrequently in the spring and early summer months of 1953?

A. Once in a while.

Q. All right, and did you sign your name to those tickets?

A. Yes, sir.

Q. How far from Benavides is that new ranch of Oscar's that you were working on the fence?

A. About 18 or 19 miles, more or less.

Q. Where did you pick up the fence posts you took out to the ranch?

A. In a ranch that is owned by a brother-in-law of Oscar's, I picked up the posts.

Q. A ranch that is owned by a brother-in-law of Oscar? Where is that in Benavides?

A. About five miles from Benavides.

Q. How many trips a day did you make going from one ranch to the other, when you were putting in those fence posts?

A. About two trips a day.

Q. And where did you leave the jeep of Oscar's when you finished your work for the day?

A. Sometimes I took it home, and other times I would leave it at Oscar's place.

Q. Did you drive any other vehicles that were owned by Oscar other than the jeep?

A. No, sir.

Q. Now, you said that you also were told that you could get gasoline at Garcia's filling station. Which Garcia is that?

A. Santiago Garcia's place.

S-1120 CROSS EXAMINATION

Q. (By Mr. Foreman) By Santiago Garcia—stand up, Mr. Garcia—you mean this man?

A. Yes, sir.

Q. You say that—then you had the option of buying gas anywhere you wanted to?

A. Well, whatever Oscar ordered me to get it.

Q. Did you, when you were running low on gas, ask Oscar where to go to get it, or drive up anywhere you wanted to?

A. When the gas was low, as I already had orders where to get it, I used to get it early in order not to go out of gas.

Q. By the way, how much gasoline did the tank on that jeep hold?

A. I never filled it up. I used to get either 10, 12, but never knew how much it would hold.

Q. How much was the most gasoline you ever bought at any one time from the Amador Caballero filling station?

A. I don't exactly remember, but I should say that I never ordered any more than 10 or 12, maybe a little more, but not much more than that.

Q. Was there any difference in your process or practice of signing a ticket at the Caballero filling station then was your practice at either the Santiago Garcia station or the Flueste station?

A. All the time, I signed the same kind of ticket.

Q. You would simply sign it Beto Segura?

A. Yes.

Q. Did you ever sign a ticket for 700 gallons of gas at the Caballero filling station?

A. No, sir.

Q. Did you ever see a ticket wherein they claimed your signature was affixed to a receipt for 700 gallons of gas?

A. No, sir.

Q. Did anyone ever show you a ticket for 700 gallons of gas and ask you if you signed it?

A. The first time that I came to Houston, I think Mr. Bottler presented me that ticket and asked me if I had signed it. It was sometime last year.

Q. This is Mr. Bottler?

A. Over there.

Q. That is the prosecuting attorney who questioned you while ago?

A. Yes, sir.

Q. Was that a ticket bearing Amador Caballero or A. Caballero's name as the seller of the 700 gallons of gas?

A. I don't remember that part.

Q. And where were you when Mr. Bottler showed you the 700 gallons of gas ticket and asked if you had signed it?

A. I mean in the very first time that we were here in this court.

Q. Well, it was at this building where we are now trying this case?

A. That is what I meant. Not in this room, but somewhere in this building.

Q. Who else was present when Mr. Bottler showed you the ticket with 700 gallons of gas with your name on it, and asked if you signed it?

A. I believe it was while I was investigated at the grand jury room.

Mr. Foreman: May we ask the prosecuting attorney for that ticket?

The Court: You may, sir.

Mr. Bottler: There is no such ticket, Your Honor. I never showed this man such a ticket.

Q. (By Mr. Foreman) Mr. Segura, did Oscar Carrillo ever tell you to charge one gallon of gas, or even a pint of gas to the Benavides Independent School District?
A. No, sir.
Q. Did you ever tell Amador Caballero, Sr. or Jr. to charge one gallon of gasoline to the Benavides Independent School District?
A. No, sir.

Mr. Foreman: That is all, Your Honor.

A. He says I didn't have to give any orders because my undersaanding is that Oscar had already made some arrangements for the gasoline to be charged.

Mr. Bottler: No further questions.

Mr. Foreman: That is all, Your Honor.

The Court: You may step down.

5-1124 **A. G. HAYES,**

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

5-1124 **DIRECT EXAMINATION**

Q. (By Mr. Wilkey) Will you state your name, sir?

A. A. G. Hayes.

Q. And where are you from, Mr. Hayes?

A. Hebbronville, Texas.

Q. How long have you lived in Hebbronville?

A. Eighteen years.

Q. What is your position there?

A. Vice president of the First National Bank.

Q. The First National Bank of Hebbronville?

A. Yes, sir.

Q. How long have you been vice president?

A. Oh, eighteen years.

Q. Have you been with the bank that long?

A. Yes, sir.

Q. Among the duties of your office as vice president of the First National Bank of Hebbronville, do you have charge and custody of the records in that bank?

A. Yes, they are kept under my supervision.

Q. Are those records currently and correctly kept?

A. Yes, sir.

Q. Kept in the regular order of your business?

A. Yes, sir.

Q. In response to a subpoena, did you bring to this court house certain records of that bank?

A. Yes.

Q. I will show you first what has been identified as Government's Exhibit 112-A, and A, B, C, D and E, and ask you, have you ever seen that before?

A. Yes, sir.

Q. What is it?

A. It is ledger sheets.

Q. Ledger sheets of what?

A. Octavio Saenz account.

Q. And where was that secured?

A. From the bank files.

Q. From your bank files?

A. Yes, sir.

Q. All right, sir. What date do these ledger sheets cover?

A. From May 12, 1949.

Mr. Foreman: May it please the Court, we ask that all of this testimony of this witness, which will be pertinent, we contend, only as to Octavio Saenz, be limited to the Defendant Octavio Saenz, except insofar as the signature of the checks may be concerned.

The Court: What says the Government?

Mr. Wilkey: The Government is offering this testimony, Your Honor, and all exhibits connected therewith in connection with the general scheme and artifice to defraud on the first 19 mail fraud counts, and on the 20th, the general conspiracy count. We believe it is admissible against all defendants on that particular issue of the case.

The Court: It will be so received.

Mr. Foreman: The Court declines to limit, and it is offered generally as to all counts as to all defendants?

The Court: Yes, sir.

Mr. Wilkey: We have not yet offered any exhibits.

Mr. Foreman: We won't be required to renew that objection at any time?

The Court: No, sir. You say at any time?

Mr. Foreman: Unless there is some other objection.

The Court: Insofar as the testimony of this witness pertains to the bank ledger sheets of Octavio Saenz, you will not need to renew the objection. I don't know how far his testimony is going, or into what field?

Mr. Foreman: There will be a number of checks also that he will identify. That is all he will testify about.

The Court: If that is to be his testimony, there need be no further objection, and you may have your exceptions thereto.

Mr. Foreman: Thank you.

Q. (By Mr. Wilkey) What dates does this ledger sheet of Octavio Saenz cover?

A. From May 12, 1949 to February 1, 1955.

Q. May 1949 to February 1955?

A. Yes, sir.

Q. All right, sir. Now, then, what is this column here, that is the third column over, or the third bracketed column over there, being the fourth on this page?

A. That is the deposit column.

Q. What does it show in that column?

A. It shows deposits that have been made to the account.

Q. Does it show the date?

A. Yes, sir.

Q. Does it show the amount?

A. Yes, sir.

Q. What other record of deposits of Octavio Saenz, here, do you have in the Hebbronville bank?

A. The original deposits tickets.

Q. How did you find those deposit tickets from your record?

A. On the ledger sheet, you took the date and looked the deposit tickets up.

Q. You looked through the deposit tickets of that day?

A. Yes, sir.

Q. I show you what has been identified here as Government's Exhibit 113-A, numbered consecutively through from 113-A through 113-HH, and ask you what these are?

A. They are the original deposit tickets to the account of Mr. Saenz.

Q. What do they represent in relation to the ledger sheet here?

A. The dates and amounts are the same.

Q. You mean—I can't read you, Mr. Hayes. In relation to the ledger sheet, what are these deposit tickets? What do they show?

A. They how the checks and the amounts of the checks deposited in his account.

Q. Each deposit ticket shown here being an entry on the ledger sheet?

A. Yes.

Q. And you get the deposit slips by looking at the ledger sheet first, and going to your deposit records?

A. Yes.

Q. Of the items which are on the deposit ticket here today, this first one is 113-A. How many entries are there?

A. There is two checks.

Q. Two checks, and do you have any records at your bank which show those checks which are listed on this deposit slip?

A. Yes.

Q. What are those records, please, sir?

A. Photostat copies of the checks.

Q. How do you keep photostat copies of these checks in your bank records?

A. By microfilm.

Q. On the film?

A. Yes.

Q. Have you brought a sample of that microfilm with you?

A. Yes.

Q. Would you show it to me, please? Is this the microfilm roll? (Indicating.)

A. Yes, sir.

Q. All right. Now, then, from a microfilm roll did you cause reproductions to be made of checks listed on the Octavio Saenz deposit slips?

A. Yes, sir.

Q. I show you what has been marked as Government's Exhibits 110-A numbered consecutively through 110-AAA and ask you what these are?

A. They are protostat copies of the checks of the Benavides Independent School District.

Q. You say protostat copies of the checks of the Benavides Independent School District?

A. Yes, sir.

Q. All right, sir. What are those checks in relation to the checks that are listed there on the deposit slips?

A. They are the protostat copies of the checks listed on the deposit tickets.

Q. Are the same checks that are listed on the deposit tickets?

A. Yes, sir.

Q. All right, sir. Are all of these records kept in the normal course of business in your bank?

A. Yes, sir.

Q. Now, what dates do these checks cover? Would you look at the first and the last portions of them?

A. This first one is dated May 26, 1949. The next one June 2, 1949.

Q. You need not read them all, but if you will look at the last and give us the last date?

A. November 30, 1952.

Q. November, 1952?

A. Yes, sir.

Q. All right.

Your Honor, we offer in evidence at this time Government's Exhibit 113—correction, 112, being the ledger sheets and 113, being the deposit slips, and 110, being the checks. I believe you have seen these and examined them before?

Mr. Foreman: Yes, I have seen them. May it please the Court, in addition to the objection we have heretofore

made with reference to each of the defendants in each of the counts and to the testimony concerning these, for the same reason we object to the exhibits themselves being received into evidence, and we also respectfully call the Court's attention to the fact that—except, I believe, for the items— five of the items antedate the September 1, 1951. Five are dated after that, being 110-WW, 110-XX, 110-YY, 110-ZZ and 110-AAA, and inasmuch as they are not alleged in the 20th count, we object to them being received as to the 20th count. It has not been established—may it please the Court, this is an objection we haven't heretofore urged—that he has the microfilm, and those are partly photographs. The best evidence would be the microfilm itself. The absence of the microfilm, or failure to present it, has not been accounted for. No proper predicate, therefore, has been laid for secondary evidence in the nature of a photograph.

The Court: What says the Government to the last objection?

Mr. Wilkey: I think the witness testified that there were photographic reproductions made of the film which is in his bank. He has already testified that, and I can ask him one more question, which I think completely clarifies it.

The Court: Yes.

Q. (By Mr. Wilkey) Mr. Hayes, after you had the photostat made from the microfilm, did you or not sit down and compare the microfilm of your bank with your photographic reproductions?

A. I did.

Mr. Foreman: May I ask a question?

The Court: You may.

5-1132 VOIR DIRE EXAMINATION

Q. (By Mr. Foreman) Isn't it possible with a viewer to present the microfilm itself? Isn't that the manner in which you compare it?

A. I looked at the pictures. That can be done, yes, sir.

Q. You can put the microfilm in front of a little gadget about the size of the light on the lady's desk and see it, even as you can an X-ray picture, or anything else of that nature?

A. It is not quite that simple.

Mr. Foreman: May it please the Court, we renew our objection with reference to the best evidence being the microfilm itself, and no predicate laid for the introduction of the secondary evidence, to-wit the photographs, reproductions from the film.

The Court: I agree with counsel the best evidence is the microfilm itself. I sometimes have the objection that is not original evidence, but it is original source evidence, the microfilm is. It is the original record of the bank, and for that purpose it is an original. The witness has verified the copies, stated that he has made comparisons. The microfilm is a valuable record of the bank. If he brought the microfilm here, I would permit photostats or enlargements to be substituted and kept for the Court's records, so I will over-

rule the objection and will admit the exhibits in evidence, that is Exhibits 112 and five counterpart, five sheets, 113 through HH, and 110 through AAA, and will state that the testimony of the witness that he has made the comparison and that they are correct may be received as any other testimony. The jury may consider the possibility of an error, but otherwise it is admitted in evidence.

Mr. Wilkey: Thank, you, Your Honor.

Mr. Hayes: when you made these comparisons of the photostats against the microfilm, how long did it take you to do that, with a viewer?

A. I went to the Recordak office there in Houston, and the man there looked them up and I looked at each one and it took me three hours.

Mr. Foreman: I got everyhing but the man there. You went to the Recordak office, and the man there—

A. Found the checks for me on the picture, and I verified them.

Q. I want to show you, before passing it to the jury, 110-A, and I will ask you first of all, are you familiar with the signature of Mr. Octavio Saenz?

A. Yes, sir.

Q. I will show you Exhibit 110-UU and ask you if you recognize the signature here in place of maker on this check?

A. It appears to be his signature, but I am not a signature expert.

Q. You are not a signature expert. All right.

Mr. Foreman: Let me see what you are showing him.

(Document tendered to counsel.)

All right.

Q. (By Mr. Wilkey) Whether you are an expert or not, I will ask you, for clarity here, if the signature of Octavio Saenz or O. Saenz, or the purported signature which appears on Exhibit 110-UU dated July 31, 1951, 110-VV dated August 31, 1951, 110-WW dated October 30, 1951—

Mr. Foreman: May it please the Court, we submit that he is simply reading, and thereby undertaking to emphasize something already in evidence as an exhibit, and the witness himself has testified he cannot testify as an expert, that it appears to be, and cannot undertake to qualify, but, on the other hand, disqualifies himself. So all we have is the district attorney sounding against the board, and not the witness testifying as to the signature. We submit, the record of what appears is best shown by the exhibits in the absence of the witness qualifying to express an opinion as to the authenticity of Mr. Saenz's signature.

Mr. Wilkey: Your Honor, I can ask him, or I can ask permission of the Court and do, in the alternative to read certain of these exhibits to the jury. I think that is permissible.

Mr. Foreman: My objection is, among other things, in the interest of time. It is unnecessary and it is repetitious, and the exhibits themselves could be passed to the jury, and save that much of words in the record.

The Court: I had understood that counsel was then in the progress of asking a question. Were you or not?

Mr. Wilkey: Yes, Your Honor, I had asked it.

The Court: What was the question?

Mr. Wilkey: The question as to whether Mr. O. Saenz or what appears to be Mr. O. Saenz's signature appears on the Exhibit 110-UU dated July 31, 1951, and subsequent exhibits here.

Mr. Foreman: We submit that that—the best evidence of that is the exhibits, which are in evidence.

The Court: Of course the exhibit in evidence just shows somebody's handwriting. I am not looking at it. It may or may not be legible. Some people's handwriting, particularly signatures are not legible. I will permit this witness to testify whether he knows Mr. Saenz's signature, and if so whether or not he believes it is. Is that the—

Mr. Wilkey: No, Your Honor, I believe the witness has already testified he is not familiar with Mr. Saenz's signature as an expert.

The Court: He said he was not an expert?

Mr. Wilkey: Yes, sir.

The Court: What is the purpose of the interrogation now? It is difficult for me to understand the objection because I haven't understood the interrogation.

Mr. Wilkey: Your Honor, I was simply asking him if Mr. Saenz's signature appears on these last seven exhibits here, but in the interest—

The Court: Since he says he cannot identify the signature, I will have to accede to the suggestion of counsel that the exhibits speak for themselves, that they reveal what they do reveal.

Mr. Wilkey: We will pursue the matter further, and will pass them to the jury.

I show you what has been identified as Government's Exhibit 111, and ask if you have seen that before?

A. Yes, sir.

Q. What is it, sir?

A. The photostat copy of a Benavides Independent School District check.

Q. How was it prepared, sir?

Mr. Foreman: Photostat of, and I missed—Benavides Independent School District what?

A. Of a Benavides Independent School District check.

Q. And how was that prepared, sir?

A. What do you mean?

Q. Was it prepared in a different way, or the same way as Government's Exhibit 110 here?

A. In the same way?

Q. At the same time?

A. Yes.

Q. You made the same comparison?

A. Yes.

Q. All right. Now, does this check concern the account of Mr. Octavio Saenz?

A. No, sir.

Q. To whom is the payee on that checks?

A. Jesus Oliveira.

Q. Jesus Oliveira. All right.

Your Honor, we offer in evidence Government's Exhibit 111. We offer it for the purpose of showing the scheme and artifice to defraud on the first 19 counts, and on the general conspiracy, Count 20, as against all defendants on the counts on which they are triable.

Mr. Foreman: We object to it as to all defendants, object to it as to Jesus Oliveira because the best evidence would be first, the original check, and in the absence of it, the original records of the bank, the microfilm records. In the second place, we object to it for the reason that a proper predicate has not been laid to make the photograph itself admissible. In the third place, we object to it as to all defendants except Jesus Oliveira because it does not come within the—it is dated May 26, 1949, therefore antedating any date alleged in the indictment and before any conspiracy was alleged to have been entered into by anybody, and we object to it as to all of the defendants except Mr. Oliveira, as I have heretofore stated, and as to all counts as to all defendants for the reason that no conspircy or any other predicate has been laid to make it admissible against them as such. We ask the Court to examine the check.

The Court: Very well, sir.

Mr. Foreman: This check is dated, Your Honor, in May, 1949, and the date alleged in 1949 as the inception or commencement of the conspiracy is alleged as September 1, 1949.

The Court: For what purpose was it offered?

Mr. Wilkey: Your Honor, it is offered as part of the proof on the general scheme and artifice to defraud. We have offered evidence before of acts of the defendants taking place prior to the date—the dates alleged in the indictment as showing a continuing scheme beginning before the date of the indictment.

The Court: All right. Now, I have another question. There is an objection that it is not the best evidence. Has the absence of the original check been explained?

Mr. Wilkey: I can do that by asking Mr. Hayes a few questions.

The Court: Very well, sir.

Q. (By Mr. Wilkey) Mr. Hayes, in regard to Exhibit 111, the photostat of the check, from what source was that made?

A. From the microfilm of our bank.

Q. Are they part of the records of your bank?

A. Yes, sir.

Q. Kept in the regular course of your business?

A. Yes, sir.

Q. Do you have those microfilm records with you?

A. Yes, sir.

Q. Are they available for comparison, if the defendants desire to compare them?

A. Yes, sir.

Q. Did you have that reproduced at the same time that you had Exhibit 110 here?

A. Yes, sir.

Q. Through the same process?

A. Yes, sir.

Mr. Foreman: We object to the leading nature of the questions.

The Court: We suggest counsel not lead the witness.

Mr. Wilkey: I think that is sufficient. He has testified it took three hours to view those checks over he viewer. One other question.

Have you compared Exhibit 111 with the original microfilm record?

A. Yes. That is this last check.

Mr. Foreman: I submit, the prosecution misunderstood the Court's observation, or else misconstrued totally the effect of the words the Court used. The Court said nothing about microfilm. The Court asked, was the absence of the original check explained, and I submit, so far it has not been done.

The Court: I think the Court can take judicial notice of the usual business records and usage, and that is the original checks would have been returned currently which would be at the end of any business month to the depositor of the Benavides Independent School District. Of course, I don't know where those original checks are. I do consider the microfilm record as the original source record. It is an

original soure record of the bank, kept in the usual course of business.

The objection is overruled, and Government's Exhibit 111 is admitted in evidence for all purposes for all counts for all defendants as offered, and I will say in this connection that the witness has testified that he has with him the microfilm records. I am not going to require the witness to relinquish the record to the custody of the Court, but if he has them with him, I will say any of these checks which have been reproduced from microfilm records may be verified by the microfilm itself, out of court hours, if counsel for either side with to do that.

Mr. Foreman: May it please the Court, may I ask him, in this connection—I misunderstood this witness while ago.

The Court: You may, sir.

5-1142 VOIR DIRE EXAMINATION

Q. (By Mr. Foreman) Mr. Hayes, do you have the microfilm of this check with you in your pocket now?

A. I don't know whether it is or not.

Q. Do you have the microfilm of any one of these checks with you now?

A. Yes, sir, there is one or two of them.

Q. Do you know which one or two of these hundred and ten checks, or whatever number there is here, Exhibit 110 I believe it is called, are shown on this thing?

A. No, sir. I just picked one out.

Q. All you did was pick out at random a litle old sample. What is that in there?

A. Microfilm.

Q. You just picked one up, not with any ideas at all of it being made available for checking, but solely at the dictation and direction of the prosecuting attorney so you could show the jury what a microfilm looked like, isn't that true?

Mr. Wilkey: Your Honor—

Mr .Foreman: Is that true or not?

A. He asked me to bring one box with me, so I picked one up.

Q. As far as you know, if there is any one of these checks on it, you don't know which one it is?

A. No.

Q. You are not sure it is any one on there?

A. Yes.

Q. Which one?

A. There is one or two on there. Which one it is, I don't know.

Q. One or two would have to be on there, but it is your best judgment it would be a small percentage of a chance of it being the one with Jesus Oliveira's name on it, May of 1949?

A. I don't know.

Q. Is it dated, by the way, to show what period of time?

A. Here is the date on it (indicating). It is August 7, 1950 to August—

Q. August 7, 1950 to August 12, 1950. Just for one week. It is not likely a check dated May 26, 1949 would be shown on there, is it?

A. No, sir, it wouldn't be.

Q. Of course not.

Mr. Wilkey: Your Honor, I could shorten that by about five minutes, I will do it now. Where is the rest of the microfilm on which all the photostats are shown?

A. In my hotel room?

Q. (By Mr. Wilkey) In what city?

A. Houston.

Q. Are you ready and willing, after five o'clock, to go with the defense counsel and me and put that on a viewer, either this evening or in the morning or any times he wants to check?

A. If you will get somebody to operate the viewer, I will be glad to.

Q. But the original microfilm is here in Houston?

A. That is right.

Q. How bulky are all of these microfilm rolls?

A. It takes a brief case bigger than that over there to put them in.

Q. Is it kind of heavy?

A. I don't like to carry it around.

Q. Is that what you—I won't ask that question. It is in Houston, in the hotel?

A. Yes.

Q. You are willing to produce it in court or anywhere else to be viewed?

A. Yes.

The Court: As announced earlier, any of these checks to which we have testimony they are reproductions of microfilm, either side may verify it from the microfilm.

Any discrepancy that is discovered should be brought to the attention of the Court.

It is now five minutes to five. Let me ask, except for making comparisons, inspection and comparison of the microfilm available, have we finished with the examination and cross examination of this witness?

Mr. Foreman: I haven't cross examined him at all. I was taking him on voir dire, Your Honor.

The Court: Oh, yes, excuse me. The jury is reminded of the instructions previously given, and Court is adjourned until 9:30 tomorrow morning.

I will ask counsel to remain briefly.

(The following proceedings were held out of the presence and hearing of the jury.)

The Court: Will the record show this is out of the presence and hearing of the jury.

Gentlemen, this morning the Government handed up five typewritten sheets, being copies of applicable statutes of the State of Texas, some in which there was request the Court take judicial notice of them, and the Court does, and the further request that they be read to the jury. Does the Government have any authority as to that being the proper procedure? Does either side with to tender to the Court any authority supporting their contention?

Mr. Bottler: No, Your Honor. The Government has no authority to tender. The defendants have stated that

they prefer that any law would be read to the jury in its charge. Since the Court has taken judicial notice of it, the Government will not press the matter be read to the jury at this time.

The Court: Very well. I want to say, I have in previous cases, both civil and criminal, allowed statutes and regulations to be read to the jury along with the presentation of evidence, but I know it is common practice. Heretofore I have not met with an objection, and since there is an objection, I want to consider it. I do entertain some doubts about reading a State Penal Statute. I do not want to confuse the issues here. I don't want the jury to get any ideas these men are being charged for violation of Article 301.

Mr. Wilkey: I would suggest that could be taken care of in the Court's charge. It is a matter, of course, which is covered by the indictment and the mere fact that necessarily some other crime may be developed from the evidence in the case does not render it inadmissible if it is necessary in order to prove up the case.

The Court: I would like for both sides to furnish the Court authority, if they have any they want to furnish, and I will comment, I am sure the defendants would rather be tried under Article 301 in which the penalty is $50, and not more than $500.

Mr. Wilkey: If the Court would prefer it, that is perfectly all right with the Government.

The Court: I do entertain some doubts as to the propriety of charging the jury on any State Penal Statute.

Mr. Wilkey: I would point out to the Court that the Exhibits 1, 2, 3, 4, and 5 state on their face, the form as prepared and distributed by the Commissioner of Education, state these are required under Article 301 of the Texas Penal Code.

The Court: Well, the matter is still under advisement, and if either side wishes to help the Court, I would be glad to have it.

Mr. Foreman: Your Honor, I promised the President of the Alaska Bar Association to do something I know will be futile, but neyerthele I shall proceed to do it.

I had agreed to address the Alaska Bar Association earlier this year, or rather right about Christmastime, on May the 27th. They are meeting from the 26th to the 29th, and also to conduct, to act as moderator, in a four-day class at Anchorage at their meeting. He was under the impression Judge Connally was probably the only Federal Judge we have, and Judge Connally was there last summer. He felt if I would take it up with the Federal Judge, he would excuse me so I might come to Alaska the 29th. I will tell him whatever the Court tells me.

The Court: On what dates?

Mr. Foreman: From May 26th to May 29th, inclusive.

The Court: Well, it looks like we are going to be working here at that time. Our plans are to work five full days

this week and only four full days the following week. Mr. Sharpe wants to address the high school class at Brownsville on the 24th, and the week after that, I am under orders to attend a judicial conference in New Orleans, and I announced early in the week of the 27th we would hold court only three days, but I find now I can hold court only two days, Monday and Tuesday.

Mr. Foreman: Of next week, Your Honor?

The Court: No, of the week of the 27th.

Mr. Foreman: I believe it is the 27th and 28th. Almost made it, didn't I?

The Court: There is a possibility, if we could come to a convenient stopping place—I have no way of making a comparison with the time we are making. The witness now on the stand is the 47th witness, which in general terms would be considered pretty good progress. If we could finish the Government's case, say, sometime around the 22nd or 23rd, or if we should finish both the Government and the defense case about that time, it might be a good time to take a week off and work on the charge.

Mr. Foreman: We will waive any testimony on behalf of the Government after the 20th.

Mr. Wilkey: Your Honor, we had already agreed that if the defendants are willing, we would waive Mr. Foreman's presence here.

In order that the Court may make a real estimate of the

course of this trial, and we would appreciate a realistic estimate from the defense side too—

The Court: If this were a non-jury case, we could be a little more flexible.

Mr. Foreman: Your Honor, I am not asking that. I am simply—I simply promised the man I would. I wrote him I was in trial, and he wrote back. I wouldn't presume or suggest. If I were the Judge, I wouldn't do it.

The Court: I want to say, I am conscientious of juries. The jury is the public and I have heard complaints from jurors about going into court and standing around for days and doing nothing, or they sit and wait while nothing is being done and that is the motivating reason behind my desire for promptness, to satisfy the jury. I don't mind keeping lawyers waiting, but I don't like to keep jurors waiting because they don't understand, and they are the public and they are entitled to see some performance. If we didn't have a jury, I would certainly be willing to forego the 27th and 28h, but when we have men on the jury who are anxious to get back to what they were doing, I don't feel like doing too much to suit lawyers' convenience.

Mr. Wilkey: It is my best estimate, Your Honor, that the Government case will be complete sometime the middle of next week, Tuesday or Wednesday, and if the defense presents only twice as much as they said they would last time, why the evidence would be through by the 27th or 28th.

The Court: Now, Mr. Wilkey, if you are through by Tuesday or Wednesday or next week, and I am only projecting now, I don't want to make any commitments. If the jury would be willing to forego working two days, the 27th and 28th, I wouldn't mind adjourning the trial until June 3rd and resuming the trial at that time.

Mr. Wilkey: Your Honor, I was just about to say that we feel for the continuity of the case, the tying in of whatever the defense have to offer with the prosecution's evidence, we feel a break in the trial of that duration would be harmful. We don't think the case would be presented in a rounded fashion as it should be, and while I know that two days may not appear to be much, it will be in the middle of the pattern and will not keep evidence and matters fresh in the jury's mind, and we feel the cause of justice would suffer if an interruption of ten days took place. There will be sufficient time to work on the Court's charge.

Mr. Foreman: Does that mean the district attorney is not going to concur in permitting the Judge to go to the judicial conference?

Mr. Wilkey: I wouldn't presume to say that or to ask it, but I think those two days available to us should be utilized for the presentation of evidence either by the Government or the defense. We think the case should continue on, in other words.

The Court: Mr. Foreman, it doesn't look like you are going to get to go to Alaska.

Mr. Wilkey: I think he is really grateful, Your Honor.

The Court: Is there anything further? If not, court is adjourned until 9:30 tomorrow morning.

MORNING SESSION—MAY 15, 1957

The Court: Be seated, please. You will continue with the testimony of A. G. Hayes?

5-1154 A. G. HAYES,

being the witness who was on the stand at the time court recessed on May 14, 1957, resumed the stand at this time, and continued his testimony as follows:

5-1154 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Hayes, did any checks ever come through your bank on the Benavides Independent School District with nothing but the blank signature G. B. Parr, the countersignature, with no signature of the maker whatever?

A. Do you have a copy of it there? I have to see it first.

Q. I asked—I will get to that in a minute. Do you recall whether or not such did occur?

A. I recall there was one deposited?

Q. And was it paid?

A. I don't know.

Q. You don't know whether it was or not?

A. No.

Q. Do you recall when it was, Mr. Hayes, that such a check came through, as to what period or what year?

A. No, sir.

Q. For the record, I tender you Government's Exhibts 110-JJ, a $60 check payable to M. I. Saenz for salary, with no name whatever either as president or secreary or acting secretary, completely blank, only the blank, only the countersignature. Was that among the exhibits that you produced from your microfilm and introduced here when you were being examined yesterday by Mr. Malcolm Wilkey?

A. Yes, sir.

Q. Was that check deposited, and did it clear through the First National Bank of Hebbronville, Texas?

A. Yes, sir.

Q. And did it so appear—was it deposited on September the 16th, 1950?

A. Yes, sir.

Q. And is it dated August 31, 1950?

A. Yes, sir.

Q. And it is endorsed M. I. Saenz, and then "For Deposit of Octavio Saenz," isn't it?

A. Yes.

Mr. Foreman: I would like to pass it to the jury, Your Honor.

The Court: Very well.

Q. (By Mr. Foreman) Do you know how many other checks counterssigned only and signed—never signed by a maker—

A. No, sir.

Q. —appeared or passed through your bank?

A. No, sir.

Q. You do not. You don't know whether it was one or a dozen or one hundred?

A. I know approximately how many there were that we had photostats made of.

Q. I understand that, but I am speaking either as to M. I. Saenz or Octavio Saenz, or to whomever it might have been made, you don't know how many just like this with no signature, just like this except the countersignature, may have passed through your bank?

A. No, sir.

Q. All right. Tell us, Mr. Hayes, how long Octavio Saenz maintained an account, if you know, at the First National Bank of Hebbronville, starting about what year?

A. About 1938 or 1939, I think.

Q. And it is—tell us how far Hebbronville is from the City of Benavides?

A. Approximately 26 miles.

Q. Is it on the railroad?

A. Yes, sir.

Q. Which one?

A. Tex-Mex.

Q. It is on the same railroad as the one for which Mr. Saenz is agent at Benavides?

A. Yes.

Q. And it is only 10 miles further to Hebbronville from Benavides then it is to San Diego, isn't it?

A. Approximately correct.

Q. And how long does it take to make that trip? Is there good road?

A. Yes, sir.

Q. Does it take about 25 to 20 minutes to drive?

A. You mean Hebbronville to Benavides?

Q. Yes, sir.

A. Well, it takes longer than that. I don't drive that fast.

Q. Well, all right. Now, with reference to the exhibits introduced, is it—hold these, please—and this has to do with how checks were signed down to, say, July of 1950, let's look at these dates and signatures and see if all of the checks that you have presented here or are in evidence, if they were all signed by Diego Heras—down to 1951, I should say. Wait a minute—these are in chronological order?

Mr. Wilkey: Your Honor, this is the very thing which I started to do yesterday, which counsel objected to and which was sustained. I was going to go into these checks, but I was stopped by objections. I make the same objection defense counsel did yesterday. The exhibits speak for themselves. I passed them to the jury, and they examined them.

Mr. Foreman: The difference between my examination and Mr. Wilkey's is, I propose to ask one question. He started out to ask several questions about all of them.

The Court: You may ask the question.

Mr. Wilkey: We submit, one question, if improper, is just as improper as six questions.

The Court: I will let him ask the question.

Q. (By Mr. Foreman) Now, the checks that I have given you this far, commencing May 26, 1949 and ending June 15, 1951, state whether or not there is any signature as to make except Diego Heras?

A. They are all signed by Diego Heras.

Q. Now, with reference to the countersignature—

The Court: I think Mr. Wilkey's—if that is the question Mr. Wilkey's objection is good, The checks are in evidence, and the jury can inspect them and see what names are signed.

Mr. Foreman: That is all right, Your Honor. I think that is all from this witness, Your Honor.

5-1159 REDIRECT EXAMINATION

Mr. Wilkey: Your Honor, I want to ask one question along the same lines of Mr. Foreman's last question, which was permitted.

Mr. Hayes, after July of 1951, and I will have to be sure that these checks are in order after July, 1951, does Diego Heras' signature appear on any checks for collection after June, 1951? Does Diego Heras' signature appear on any checks in any position? Would you look through all of them please and answer me?

The Court: And isn't that likewise something that could be ascertained by the jury, or something, if true, that could be pointed out in argument?

Mr. Wilkey: It is the other part to his question, Your Honor. He was permitted to ask it.

The Court: I ruled his question wasn't proper when I found out what it was.

Mr. Wilkey: I thought Your Honor permitted one to be answered and that was the one.

The Court: I found out what it was and I said it was not of any assistance to the Court or the jury. It was something they can ascertain for themselves. If this is going on in this case, he had a black piece of candy and therefore I want a black piece of candy, he had five minutes, therefore I want five minutes. Time is precious, and I want to keep moving along and I want to avoid—I know I will not be completely successful, but I hope I will enjoy some success—I want to avoid things that are going to burn up time which in the end will not serve any useful purpose in helping the jury decide the issues in this case.

Mr. Wilkey: We withdraw the question, Your Honor, and have no further questions of this witness.

Mr. Foreman: Nothing further too, sir.

5-1160 O. T. LIGHT,

a witness called on behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

5-1160 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?
A. O. T. Light.

Q. And where do you live, sir?
A. Alice, Texas.
Q. How long have you lived in Alice, Texas?
A. Since 1944.
Q. How are you employed?
A. With Standard Auto Parts.
Q. What is your job with them?
A. Salesman.
Q. What were you doing in the year 1953?
A. I was selling automobile parts.
Q. And for what company?
A. Standard Auto Parts.
Q. What territory did you service?
A. Well, several counties. I worked Duval, Jim Hogg, Zapata, Brooks, part of Nueces, and Clayberg.
Q. Did you bring with you an invoice dated April 6, 1953 for a sale made to the Conoco service station at Benavides?
A. Yes, sir.
Q. Could I see it, please?
A. (Tendered document to counsel.)

Mr. Bottler: Will you mark this as Government's Exhibit, please?

(Document tendered to the Clerk and marked Government's Exhibit 208.)

Q. (By Mr. Bottler) I will hand you Government's Exhibit 208, and ask you if you can identify it?
A. Yes, sir.
Q. What is it, sir?

A. For a battery and some Rust Master, which is a rust preventer that goes in radiators.

Q. Who was this battery and Rust Master sold to?

A. To the Conoco service station in Benavides.

Q. Who operates that station?

A. Mr. Caballero.

Q. What day was this merchandise delivered?

A. The day of the week?

Q. No, the date.

A. Oh, the 4th and 6th of 1953.

Q. What do you mean?

A. The fourth month and the sixth day of 1953.

Q. April 6, 1953. What was the wholesale price on the battery?

A. $13.64.

Q. And what was the retail price, in 1953, for this type of battery?

A. $21.35, sir.

Q. Who made out this invoice?

A. I did.

Q. Did you make it out at the time you delivered the goods?

A. I made it out when I took the order for it.

Q. All right, and was that made on April 6, 1953 when you took the order for it?

A. That is right.

Mr. Bottler: We offer in evidence Government's Exhibit 208.

Mr. Foreman: No objection

The Court: It is admitted.

Mr. Bottler: No further questions.

5-1163 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Light, did you deliver this battery yourself?

A. Yes, sir.

Q. You drive a truck?

A. No, sir, I drive an automobile. I work Benavides on a Monday, and I go to Hebbronville on Tuesday, and most of the time this particular fellow doesn't buy much and I can put it in the back of my car and take it along to him Tuesday morning as I go to Hebbronville.

Q. Do you know the serial number of this battery?

A. No, sir.

Q. Is it available anywhere?

A. No, sir. You mean as far as the serial number? There wouldn't be any serial number on the battery. There would be a code on the battery.

Q. Each battery does not have a separate number?

A. No, sir.

Q. What type battery was this?

A. It is a Delco.

Q. Do you keep a record of the purchaser and date of purchase of each battery so as to give a warranty?

A. We don't issue a warranty at the time the battery is sold. That is up to the man that makes the retail sale.

Q. Does he keep the record so as to come back on you?

A. He is supposed to

Q. If a battery is sold by a retail dealer at a given

time, under which was a guarantee to replace a defective battery, he should keep a list and the date he sold it?

A. Of course, the battery has a code mark on it. It can be adjusted from the code on the battery.

Q. But could it then be identified as the battery sold on a given date?

A. No, this battery, A, B, C, D, and so on, represents January, February, on down, March, with the letters and the numbers. For instance, an A7, that battery left the factory in the first—in January of 1957, you see, and all the batteries have a code mark on them, therefore if he didn't issue a warranty slip on the battery at the time it was sold, he could go back and adjust it on the code markings. Of course, the purchaser might not get the full benefit of the guarantee of the battery, but it could be adjusted that way.

Q. If the retailer could not establish he sold it, you wouldn't be under obligation to replace it?

A. Yes, we would. We would issue an amount of credit on what was left in the battery. If we sold a battery in Alice, and you were down in Houston it would still be under the warranty of that battery.

Q. When you say the retail price is $21.35, is that a fixed retail price?

A. That is a suggested retail price by the manufacturer.

Q. You do not know where or to whom the battery represented by this invoice 0976, Government's Exhibit 208, was sold, do you?

A. I have no idea.

Q. In fact, you don't know whether it was ever sold, do you?

A. No, sir.

Q. How long have you been in the battery business?

A. Well, since 1934.

Q. On different type cars?

A. Different type batteries.

Q. Tell us whether or not different type automobiles require different type batteries?

A. Yes.

Q. Isn't that by volts or by size?

A. Well, both.

Q. Well, what size was the battery?

A. That is what is known as a Group 2. It is a six volt battery, and a Group 2.

Q. What inches would it be square or long?

A. Well, I don't know. It is longer than it is wide. It is about—I don't know exactly. I have an idea that is around eight by twelve in size, and about seven high.

Q. And Group 2 are for what type automobiles?

A. That is a Ford battery.

The Court: What is the relevancy of this?

Mr. Foreman: Because the car is an Oldsmobile 98, and the Government introduces it as a Ford battery for an Olds 98, and it would not have been the same battery, Your Honor.

Mr. Bottler: Your Honor, we don't contend—the evidence hasn't shown this was the same battery. The evidence was that this man kept a stock of batteries, and he would make a sale out of his stock and when his stock was depleted by sales, or something, he would order it. Also, there is no evidence that it was an Oldsmobile 98.

Mr. Forman: We object to the argument of the Government, Your Honor.

Mr. Bottler: We disagreed with counsel's statement of what the testimony was.

The Court: Very well. I am wondering how far we are going into batteries, and how that is going to help decide the issues in this case?

Mr. Foreman: I am not going very far, Your Honor. I will be through with this man in a minute.

Mr. Light, do you recall if at any time you have sold other than a Ford or Chevrolet, or Group 2, battery to the Caballero service station?

A. Yes, I have sold them other batteries, but very few. Practically all the batteries I have ever sold them has been Ford and Chevrolet batteries, six volts. I have sold them 12 volts Chevrolet batteries.

Q. How many volt batteries does an Olds 98 take?

A. In that particular model, a six volt. What year?

Q. 1953?

A. That is a six volt used in that. The later models take a 12 volt.

Q. What size does a '53 take?

A. About that size, only the posts—the battery posts are on the opposite sides. It is a little higher, but the posts are on a different side.

Q. Would a Ford battery work in an Oldsmobile?

A. It possibly could, but you would have to change your battery cables. They would have to go across the battery instead of fitting on it like they should.

Q. Are you still selling to Caballero?
A. Yes.

Mr. Foreman: That is all

The Court: You may step down.

5-1168 ROMERO MORIN,

a witness called in behalf of the Government herein, having been first duly sworn on oath, testified as follows, to-wit:

5-1168 DIRECT EXAMINATION

Q. (By Mr. Bottler) What is your name, sir?
A. Romero Morin.
Q. Where do you live?
A. Benavides.
Q. How long have you lived at Benavides?
A. All my life.
Q. For whom are you now working?
A. City Hall.
Q. In what town?
A. In Benavides.
Q. Have you ever worked for the Benavides Independent School District?
A. Yes, sir.
Q. When did you start working for the Benavides Independent School District?
A. Well, I started around April, 1952.
Q. All right. And how long did you work for them?

A. About a little over a year and a half.

Q. About when did you leave the Benavides Independent School District?

A. About around October, 1953.

Q. All right, and in what department did you work?

A. The taxation department.

Q. Who was the tax assessor-collector while you were working in the tax department?

A. Mr. D. C. Chapa.

Q. Who was your immediate supervisor in the year 1952?

A. Diego Heras.

Q. And when did Mr. Diego Heras leave the taxation department?

A. Mr. Heras left—the last time he worked was in about December of 1952.

Q. Who was your supervisor, your immediate supervisor, after Diego Heras left in December of 1952?

A. Hilda Chapa took over the duties.

Q. Is that her full name?

A. No, sir, Gonzales, Hilda Chapa Gonzales.

Q. Did Mr. Chapa have a secretary who worked for him there?

A. Yes, sir.

Q. And who was that?

A. Mrs. Hilda Chapa Gonzales.

Q. The same person who was your supervisor in 1953?

A. That is right.

Q. What duties did you perform while you were working there?

A. Well, make out and fix the renditions, and type the tax roll.

Q. What renditions did you make out?

A. On real estate.

Q. Now, are the tax rolls divided in several sections, A, B, C, D and so forth, or are they all in one section?

A. No, it is separate, A, B, C, et cetera.

Q. What is Row A?

A. Row A? Well, if I am not wrong, it is the rendered property.

Q. Is that real estate, or what?

A. Real estate, yes.

Q. What is B?

A. B is the unrendered property, real estate.

Q. What is C?

A. C is the rendered property of royalty.

Q. Oil and gas. What is D?

A. D is the unrendered property.

Q. What kind of property, real estate, or oil and gas?

A. Oil and gas.

Q. Where did you get the rendition sheet to prepare for the tax rolls C and D, the oil and gas?

A. Well, the company by the name of Thomas Y. Pickett.

Q. Who prepared renditions for the real estate?

A. We did there at the school district.

Q. After the renditions were prepared, what did you do?

A. Well, after they were prepared, we will type them on the tax roll sheet.

Q. All right. After you prepare the tax rolls—do you prepare that for one year or more than one year?

A. For one year.

Q. After you prepare the tax rolls, what do you do next in your work in the taxation department?

A. Type out the tax receipts.

Q. In what form were these tax receipts typed out?

A. They were in, I believe, in four copies or five.

Q. What was the top copy?

A. That was the original.

Q. All right, and what was it?

A. The original, it is when the people, the taxpayers, come in to pay their tax. You have to issue them one.

Q. Was it a blue sheet or white sheet or what color was it?

A. White.

Q. Was that the tax—you say that is what you give the people?

A. That is right.

Q. When they pay the taxes?

A. Yes.

Q. That was the tax receipt?

A. Yes.

Q. What was the next sheet, as best you recall?

A. The next is, I believe, a statement.

Q. What color was that?

A. It was blue.

Q. That was the tax statement?

A. Yes.

Q. Now, did you type up, then, the tax receipts, and the tax statement, and the other office copies at one time on one booklet?

A. Yes, sir, it is all in one.

Q. What did you do after you typed up this tax receipt and tax statement booklet?

A. Well, the first thing was to separate the statement from the rest of them, and mail it to the people.

Q. All right. I will hand you what has been marked for identification as Government's Exhibit 57-B, and ask

if you can identify it, the form which this is printed on or typed on? Have you seen a form like this?

A. Yes, sir.

Q. All right. Is this a form that is used in the Benavides Independent School District?

A. Yes, sir, it looks like it.

Q. And 57-C—

The Court: Is anyone having any difficulty hearing? I am going to ask that the witness speak out so everyone in the courtroom can hear you.

Q. I will ask you what 57-C is?

A. Well, that is a—this one here, you mean? (Indicating.)

Q. Just what form is it? I am not asking which particular one this is. I am asking if you recognize the form?

A. Yes, I recognize that.

Q. And is it a form used at the Benavides Independent School District, one of the forms?

A. It is.

Q. Now, was there any way—I will ask you, after the money came back in from the taxpayers, what did you do to indicate the taxes have been paid? What would be done?

A. Well, you had to issue them the original receipt.

Q. All right.

A. And then after that, give them credit on the tax rolls right away.

Q. How do you find the place on the tax roll where this property is set out?

A. Well, by the roll number and by the page number and the line number.

Q. And is that placed on the upper part of the tax receipt?

A. Yes, sir.

Q. So that if you received a tax receipt of the Benavides Independent School District showing Roll C, Page 25, and Line 20, where would you go in the tax roll to find that property listed?

A. Well, I would go as indicated here on the form.

Q. You would go to the place that is indicated?

A. That is right.

Q. All right. I will show you what has been marked Government's Exhibit, 48, and ask you if this is likewise the type of form used at the Benavides Independent School District?

A. Yes, sir.

Q. Now, after you prepared the tax statement and the tax receipt in the booklet, what, if anything, did you do with the tax statement?

A. Well, we separate them and put them in envelopes individually, and send them—put a stamp on them and mail them.

Q. Now, then, after you mailed out the tax statements what would happen? Did you ever see any taxpayer's checks?

A. Well, after that, naturally the money started coming in.

Q. All right. And when the money came in what did you do? What would be done with respect to the tax receipts?

A. The mail was opened and checked, who paid—

Mr. Foreman: Occasionally I catch about every third word.

The Court: I will ask that the witness speak louder. It

is important that everyone in the courtroom hear you, and I want you to keep your voice sustained loud enough so everyone can hear you, and I want you to speak distinctly.

Q. (By Mr. Bottler) Would you repeat your answer, please?

A. Well, they opened the mail, you know, and see who had paid their taxes and each make out their receipt, on each receipt. If it was mailed, mail them. If they are personally paid, issue to them right there personally. After that, just go to the roll and start giving credit to all those that had already paid.

Q. All right. Now, what was done with the tax receipts after they were made out, if the check came in by mail?

A. Repeat that question, sir?

Q. After the tax receipt was signed and sealed, what was done with the tax receipt?

A. It was kept as a record there.

Q. The tax receipt was kept as a record?

A. No, sir, they mail it. They mail that one.

Q. Who did they mail the tax receipt to?

A. Well, to the taxpayer.

Q. Did you use any messenger service to deliver tax receipts or tax records, or did you use the United States mail?

A. It was all by mail.

Q. Did you ever have—where was the mail kept when it came in at the School District office there?

A. Well, in D. C. Chapa's office.

Q. All right, and who handled the taxpayers' checks with respect to seeing they were entered on the tax rolls?

A. Hilda Chapa Gonzales.
Q. Now—

Mr. Foreman: Your Honor, I would like for him to fix the time.

Mr. Bottler: All right.
During what time did Hilda Chapa Gonzales handle the entering of the taxpayers' checks on the tax rolls?
A. At what time?
Q. Yes.
A. Well, all of the time, from October on.
Q. All right.
Mr. Foreman: I didn't catch that.
A. October on.

The Court: Do you want to know what year?

Mr. Bottler: What year or years?
A. 1952 and part of '53.
Q. All right. Now, you stated that on the tax rolls, C and D that you would use renditions prepared by Thomas Y. Pickett. In the year—how many people would work on these tax rolls, first?
A. We were—let's see—we were about six, I believe. Five or six.
Q. Who did, in the year 1952, who portioned out the tax renditions on rolls C and D to be used in making up the tax rolls?
A. 1952?
Q. Yes.
A. Diego Heras.
Q. And who handed them out and supervised in 1953?
A. Hilda Chapa Gonzales.

Q. Did you ever handle any of the taxpayers' checks yourself?

A. Occasionally.

Q. All right. What was the occasion you had to handle those checks?

A. When I was sent to do an errand.

Q. Who sent you on an errand with the taxpayers' checks?

A. Well, D. C. Chapa.

Q. Mr. D. C. Chapa?

A. Yes, sir.

Q. All right. And what if anything did he say to you when he would send you on an errand with the taxpayers' checks?

Mr. Foreman: I would like to know if he finished his answer. I don't know if counsel meant to interrupt, and I would like to know, had you finished your answer?

A. Well, he sent me on an errand to the bank to get—

The Court: I think the question was, "Who would send you," and your answer was "D. C. Chapa," and the question now is had he finished that answer? I assume by that you want to know if anyone else ever sent him.

Mr. Foreman: That is right.

A. Well, if I recall, one time Diego Heras.

Mr. Foreman: May it please the Court, we ask that this testimony be limited to D. C. Chapa, and object to it on behalf of the other defendants as to all other counts.

The Court: Objection overruled.

Q. (By Mr. Bottler) Now, aside—do you definitely recall the time when Diego Heras sent you?

A. Well, I don't definitely recall the time. He was—

Q. Do you recall definitely that he did send you?

A. No—no, sir.

Q. You recall definitely that D. C. Chapa sent you to the bank with checks?

A. Yes, sir.

Q. Did he send you one or more times?

A. Well, over one time.

Mr. Foreman: What was the answer?

A. Over one time, sir.

Q. How often did he send you to the bank during the time that you worked there in the Benavides Independent School District office?

A. Well, I should say on and off.

Q. Well, with relationship to a week, for example?

A. Well, I would say in one week I might go one time, and then I wouldn't go for the next week, and then the following week I might go two times, and like that.

Q. In what years did you go to the bank on these errands for Mr. D. C. Chapa?

A. Part of 1952 and also 1953.

Q. All right, sir. Now, what, if anything, did he say to you when he would send you to the bank?

A. Well, the only thing I recall was that he said to go and get that cashed for the office.

Q. All right. And what did he give you when he would send you on the errand to the bank?

A. He give me an envelope containing checks.

Q. All right, and what did you do with the envelope and the checks?

A. I took it right away to the Merchants Exchange Bank.

Q. And what did you do there?

A. I hand them over to Joe Cadena.

Q. What else?

A. Joe get the cash and put them back in the same envelope, and bring them back to the office.

Q. Did you count those checks or run an adding machine tape on them before you took them over?

A. No, sir. Joe Cadena did the taping at the bank.

Q. Did you know on every occasion how much money you were taking and how much in checks was being cashed?

A. Most of the time, I used to watch Joe Cadena and he would average $500.

Q. Were there any occasions when you didn't watch Joe Cadena?

A. Yes, sir. One or two times, I believe.

Q. And on those occasions, did you know how much money you were getting from the bank?

A. No, sir.

Q. Did you count the money after it was given to you in the envelope?

A. No, sir.

Q. What did you do with the envelope when it was given back to you?

A. I went back to the School District, and turned it over there.

Mr. Foreman: I didn't catch the answer.

Mr. Bottler: He went back to the School District and turned it over there.

Who did you give it back to?

A. If Mr. Chapa was there, I handed it to him.

Q. What did you do if Mr. Chapa was not there.

A. To his secretary.

Q. Who was that?

A. Hilde Chapa Gonzales

Q. I will hand you Government's Exhibit 29, a check of Albert Martin to the Benavides Independent School District, and ask you to look on the reverse side and state whether or not the endorsement purportedly Romero Morin looks like your signature?

A. Well, it looks like mine.

Q. I will hand you Government's Exhibit 30, a check of the Barbara Oil Company, payable to the Benavides Independent School District, and ask you to look on the reverse side at the endorsement, which purports to be Romero Morin, and ask you if that looks like your signature?

A. It looks like my signature.

Q. I will hand you Government's Exhibit 31, a check of J. B. Peal Properties payable to the Benavides Independent School District, and ask you to look at the endorsement on the reverse side, and ask you if that looks like your signature?

A. It also looks like mine.

Q. I will hand you Government's Exhibit 32, a check of O. W. Greene to the Benavides Independent School District, ask you to look on the reverse side at the signature purported to be Romero Morin, and ask you if that looks like your signature?

A. It looks like mine too.

Q. I will hand you Government's Exhibit 33, check of J. E. Beall for $355.55 to the Benavides Independent

School District, ask you to look on the reverse side at the endorsement which purports to be Romero Morin, and ask you if that looks like your signature?

A. It looks like my signature.

Q. Did you ever endorse any taxpayers' checks payable to the Benavides Independent School District which you did not cash at the Merchants Exchange Bank?

A. I don't remember.

Mr. Foreman: May it please the Court, we ask that this testimony be limited to the counts in the indictment where the checks are described as shown, that is, the Albert Martin be limited to Paragraph 11, Count 20, the Barbara Oil Count 20, Overt Act 30, the B. J.—the J. B. Peal—Martin is Exhibit 29, Barbara 30, J. B. Peal Exhibit 31, that it be limited to Count 20, Overt Act 11, and Exhibit 32 be limited to Count 20, Overt Act 11—32 is O. W. Greene, 33 is J. E. Beall, Count 20, Overt Act 9, and Count 16, for the reason—and we object there to each defendant to the exhibits being exhibited or received as to any other count except those stipulated to.

Mr. Bottler: Your Honor, they are offered on all counts. They are relevant to show the scheme and artifice which is directly charged in the indictment.

The Court: The motion is overruled.

Q. (By Mr. Bottler) Now, did you ever make any deposits at the Texas State Bank of Alice?

A. I believe I went over there once.

Q. All right, and what did you take over there when you went?

A. Checks.

Q. All right. Did you take a deposit slip with you or an adding machine tape?

A. Yes, sir.

Q. Which did you take?

A. An adding machine tape.

Q. And where was the deposit slip made up?

A. At the Alice bank.

Q. Did you take any cash with you, or did you just take checks?

A. Oh, checks.

Q. Now, did you work at the school district office?

A. Yes.

Q. Is that located on the school grounds of the Benavides Schools?

A. Yes, sir.

The Court: I think this would be a good time to take a recess and give you gentlemen time to arrange your exhibits. Court will recess for 20 minutes.

(Short recess.)

The Court: Be seated, please.

Q. (By Mr. Bottler) Now, Mr. Morin, would you look at this beaverboard here and the plan that appears hereon. You can get out of your chair, sir.

(Witness complies with counsel's request.)

Have you examined this plan prior to coming into this courtroom?

A. Yes, sir.

Q. All right. Now, I will ask you if this is a plan of the Benavides Independent School District tax office?

The Court: If it is believed important, I think it should be moved around so the alternate can see it. I suggest that that end of the easel be moved back in that manner.

A. Yes, sir.

Q. All right. Now, where is the front of this building on the plan? Is it—

A. (Indicating.) Here is the front right here.

Q. All right. You are pointing to the lefthand side of this plot plan. What was in this space immediately in front of this door?

A. That is what we call a meeting room or reception room.

The Court: He has identified the front now. This is going to be a part of the record, and if there is a possibility it might go to the Court of Appeals, I think the witness should take a pencil and write "front."

Mr. Foreman: May I suggest the rooms be numbered 1, 2, 3, 4 and 5?

The Court: I think that is a proper suggestion, or you may write it, Mr. Bottler, where he indicates.

Q. (By Mr. Bottler) Now, this is the front of the building?

A. Yes.

Q. And what is this right here (indicating)?

A. That is the main entrance, right there.

Q. That is the door?

A. Yes, sir.

Q. Now, does this building face north?

A. Yes, sir, it faces north.

Q. All right.

The Court: And the front is the north?

A. That is right, sir.

Q. All right. We will number this room 1. What do you call it?

A. The reception room.

Q. That is No. 1, the reception room. Now, proceeding south, what is this figure which extends approximately halfway back of the building which is marked "counter"?

A. It is a—more like a division from this room (indicating) to this one here. It is a counter there.

Q. How high is this counter?

A. It is about, I should say, about four feet high.

Q. All right, then. What was done in this part of the reception room south of the counter? I will mark this No. 2. Did anyone work in No. 2?

A. Yes, sir, they used to work—

Mr. Foreman: I can't hear the witness.

A. They used to work in this room too, and the taxation department.

The Court: Does the jury have any difficulty hearing? I am going to suggest that the witness stand back of the jury box. He can answer just as well from there, because I want to be certain all the jurors can hear him.

Q. All right.

Now, due south of the room which is now marked 2, and I will put taxation department—

The Court: Is that what the witness said?

Mr. Bottler: I believe he did say it was used by employees of the taxation department.

Mr. Foreman: He did say that, but I don't believe he stated that is the only place they work, and I don't believe he will so state.

Mr. Bottler: I don't believe he will either.

Due south of that is another—the southernmost part of the building is marked "Vault." What is this room?

A. That is the vault where they kept all of the School District records there.

Q. All right. Was there a door across here (indicating)?

A. That is a door to go into the vault.

Q. Was there a combination on this door, or what?

A. Yes, it has got a combination.

Q. Did you know the combination?

A. No, sir, I sure didn't.

Q. Do you know whether or not it was common knowledge, what the combination was?

A. No, sir.

Q. You don't know. All right. Combination look (indicating on plan). All right. We will number this 3.

Now, going to the room which is directly to the east of Room No. 2, I will ask you—and I will mark this Room 3—what was kept—

The Court: You have marked another room 3.

Mr. Bottler: I am sorry, 4.

What was this room used for?

A. For the employees, used to type the tax rolls and all the taxation work in there.

Q. Was there a door and—to the outside from Room 4 on the eastern part?

A. Yes, sir.

Q. Was this door kept locked or unlocked?

A. When we used to work there, it was open, and at closing time we used to close it.

Q. All right. "Door." We will mark that on the eastern side of Room 4. (Indicating.)

Now, I will turn to the room which is directly north of 4 and east of the southernmost part of Room No. 1. I will mark this room No. 5, and I will ask you, who was in this room?

A. Oscar Carrillo.

Q. All right. Oscar Carrillo. Is that Oscar Carrillo, Sr.?

A. Yes, sir.

Q. All right. Now, did anyone else use this Room No. 5?

A. Well, his secretary.

Q. All right, and what was her name?

A. Velia Oliveira, now Bridges.

Q. Is that Mrs. Verlon Bridges? Her name then was Velia Oliveira? How do you spell Velia?

A. V-e-l-i-a.

Q. How do you spell Oliveira?

A. O-l-i-v-e-i-r-a.

Q. And her name is now Bridges?

A. Yes, sir.

Q. What was her name when you were working there in 1952 and 1953?

A. Velia Oliveira.

Q. Now, was there a door between Room 5 and the room which is directly north of it?

A. Yes, sir.

Q. All right. Was this door kept locked or unlocked?

A. Sometimes it was closed, sometimes it was open.

Q. Was there a lock on this door?

A. Yes, sir.

Q. Was there a door from Oscar and Velia's office into the reception room?

A. Yes, sir.

Q. And was this door kept locked or unlocked?

A. Sometimes it was locked.

Q. Was that while Oscar and Velia were in this office, that it was sometimes locked?

A. No, when they were not there it was locked too.

Q. It was locked when they were there and locked when they were not, or both?

A. Well, it was closed. I believe sometimes it was locked too.

Q. All right. When they were there and this door was locked and you wanted to see one of them, how did you go about seeing them?

A. Well, I had to knock on the door.

Q. And when you knocked on the door, did you go into the room, or did you stay outside and conduct your business in front of the door?

A. If they invite me in, I go in. If not, I stay out.

Q. Sometimes you went in and sometimes you stayed out, is that correct?

A. Yes.

Q. Proceeding to the next room, which is directly north of Room 5, which I will mark 6, I will ask you who stayed in this room?

A. That was Mr. D. C. Chapa's office there.

Q. D. C. Chapa? Did anyone else use this room?

A. His secretary.

Q. And who was that?

A. Hilda Chapa Gonzales.

Q. Now, was there a door from D. C. Chapa's office into the reception room No. 1?

A. Yes, sir.

Q. Was this door kept locked or unlocked?

A. Unlocked?

Q. And when you wanted to go into this office, how did you go about it?

A. Just walked into it.

Q. Now, during the years that you were there in 1952 and 1953, how did you receive your salary checks?

A. Repeat that question again.

Q. How did you get your salary checks?

A. With a check, sir.

Q. Who would give it to you?

A. Velia used to hand them out.

Q. To all of the other workers there in the office?

A. Yes, sir, that is right.

Q. Where did she bring them from?

A. From Room No. 5.

Q. Oscar Carrillo, Sr. and Velia Oliveira's office?

A. Yes, sir.

Q. What position with the Benavides Independent School District did Oscar have in 1953 and 1952?

A. What position you say, sir?

Q. Yes.

A. Well, I really don't know. I believe he was Board secretary, or something.

Mr. Foreman: Your Honor, I ask that they fix the date and the time. The jury may assume he was so throughout this trial—throughout the time alleged in the indictment.

The Court: This witness has testified that he worked in the office from April, 1952 until October, 1953. He probably thinks his testimony pertains to that period, but if further specification of time is requested, I think it should be brought out.

Mr. Foreman: If it is understood he is testifying only to that time, I have no desire to involve the testimony to any more detail than that.

Mr. Bottler: I thought I asked the question during the time he was working there. If not, I will make it clear.

During the time you were working there, what position did Oscar have?

A. Like I say, I don't recall very well, but I understood he was the Board secretary.

Q. All right. Now, in the year 1952, you said that Diego Heras was your immediate supervisor?

A. Yes, sir.

Q. And where did he work?

A. He worked in Room No. 2.

Q. Room No. 2. All right. Did you ever see Diego Heras making out any salary checks for you?

A. No, sir. I don't recall.

Q. All right. Now, did you ever see the salary or other checks drawn on the Benavides Independent School District being made up at all?

A. No, sir.

Q. You only saw them being brought out of that office, No. 5?

A. That is right, sir.

Mr. Bottler: No further questions.

5-1195 CROSS EXAMINATION

Q. (By Mr. Foreman) Mr. Morin, on the diagram about which you have testified, appears what has been designated as Room 1 and Room 2. Tell the jury whether or not in truth there were two rooms or only one room with a counter about four-foot high separating what is marked 2 there from what is marked 1? Isn't it true that all 1 and 2 are are just the one room with a counter between the two? Was there any partition? In other words, was there anything above this counter to the ceiling, or was it just one big room?

A. One big room.

Q. Then 1 and 2 is the same room, the front part marked reception room and the back part of the same room marked taxation department?

A. Yes.

Q. Where was the telephone there? Was there a telephone available?

A. There used to be one on the counter there.

Q. Was there another one here?

A. Yes, sir, another one there.

Q. Did this one stay at the counter, or was it taken out and eventually the counter—was there one on the counter all the time you were there?

A. As far as I remember.

Q. Did other folks that didn't have phones frequently come and use the telephone?

A. Yes.

Q. Where did they, when they came to use the phone, normally use the phone?

A. In D. C. Chapa's room.

Q. They would go into the open door? There don't appear to be any desks in 6, but there were desks in 5, 4, 2, and a table in 1. Were there not desks in the room marked 6?

A. Yes.

Q. And how many?

A. Two, I believe.

Q. And was the telephone on one of them?

A. Yes, sir. That is right.

Q. Now, when the checks would come from the taxpayers, tell the jury whether they would come in small numbers, two, three, four, five, or come in 50, 60 or 100, 200 or 300 at a time? How would they come?

A. By mail you mean, sir?

Q. Yes.

A. I don't have any idea.

Q. How many would you say at any given time?

A. Oh, I would say about 20 or 25 at a time.

Q. And would they or not accumulate for sometimes days at a time before being taken to the bank?

A. Yes, sir.

Q. And would there not sometimes be several hundred checks taken to the bank?

A. Yes, sir.

Q. And while the checks were accumulating and before they were taken to the bank, Mr. Morin, where would